

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENTS

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PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 1, 1998

+ + + + +

The Public Hearing convened in Room 220, 441 4th Street,
N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Sheila Cross Reid,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson

HERBERT FRANKLIN

BETTY KING

STAFF PRESENT:

MADELIENE H. DOBBINS, Director

TRACEY WITTEN ROSE, Staff

BEVERLEY BAILEY, Staff

ALSO PRESENT:

BARBARA HAAS

PHIL MENDELSON

ESTHER NAMIAN

ALSO PRESENT (continued):

MARY PETERS

KAY STAFFORD

LINDSLEY WILLIAMS

RODNEY CREECY

HUGH V. KELLY

SANDRA PEACHES

BENJAMIN SINGLETON

APPEARANCES:

On Behalf of the Applicant
National Child Research Center:

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Hugh V. Kelly:

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1 P-R-O-C-E-E-D-I-N-G-S

2 1:15 p.m.

3 CHAIRPERSON REID: Good afternoon, ladies and gentlemen.

4 I am Sheila Cross Reid, Chairperson, The Board of Zoning Adjustments of the
5 District of Columbia. Joining me today are Betty King and Herbert Franklin. Copies
6 of today's agenda are available to you on the table at the rear of the hearing room.

7 There is to be no smoking, eating or drinking in the hearing
8 room. All persons planning to testify either in support or in opposition are to fill out
9 two witness cards. These cards are located on each end of the witness tables.
10 Upon coming forward to speak to the Board, please give both cards to the Reporter
11 who is sitting to my right.

12 Notice of today's hearing was given by posting the subject
13 property, publication in the D.C. Register, and various other means. The order of
14 procedure for special exception in various cases will proceed as follows: 1)
15 preliminary matters, 2) statement of witnesses of the Applicant, 3) Government
16 reports including the Office of Planning, Department of Public Works or others, 4)
17 the Advisory Neighborhood Commissions, 5) parties of persons in support, 6) parties
18 of persons in opposition, 7) closing remarks by the Applicant.

19 Cross examination of the witness is only permitted for parties in
20 the case. The Board will adhere to this schedule as strictly as possible. Those
21 presenting testimony should be brief and non-repetitive. If you have a prepared
22 statement, you should give copies to the Staff and orally summarize the highlights.
23 It gives us your statements before summarizing.

24 The record will be closed at the conclusion of each case except
25 for any materials specifically requested by the Board. The Staff will specify at the
26 end of the hearing exactly what is expected. The decision of the Board in these
27 contested cases must be based exclusively on the public record.

28 To avoid any appearance to the contrary, the Board requests

1 that persons present not engage the Members of the Board in conversation. At this
2 time, the Board will consider any preliminary matters. Preliminary matters are those
3 which relate to whether a case will or should be heard today, such as a request for a
4 postponement, continuance, or withdrawal, or whether proper and adequate notice
5 of a hearing has been given.

6 If you are not prepared to proceed, now is the time to raise such
7 a matter. Does the Staff have any preliminary matters?

8 MS. ROSE: Staff has a preliminary matter with regard to Case
9 16307 of the National Child Research Center. On the Affidavit of Posting, the
10 affidavit does not indicate when it was submitted. We didn't stamp it. The Staff
11 didn't stamp it. We need to know when it was submitted to our office.

12 MR. WATSON: The same day it's notarized.

13 CHAIRPERSON REID: Would you please speak into the mike?

14 MR. WATSON: Matthew Watson, Counsel for the Applicant.

15 CHAIRPERSON REID: Okay.

16 MR. WATSON: It's submitted the same day it's notarized.

17 MS. ROSE: All right. It is notarized on the 25th of March, and
18 therefore, it will be timely. Thank you.

19 CHAIRPERSON REID: Does anyone here have any preliminary
20 matters? Okay. We will now proceed with the first case.

21 MS. ROSE: Madam Chair, I think that there's a preliminary
22 matter with regard to 16329, a Request for a Continuance. Someone should have
23 been here to ask for that.

24 CHAIRPERSON REID: Is there someone here that is
25 associated with the Case Number 16329, Robert M. Holland, et al.? I think there
26 was a written request for postponement. There's no one here. So, we can go
27 ahead and act on that at this time.

28 I have read the request, and unless my Board Members object, I
29 have no problems with waiving the Rules to allow there to be a postponement of this

1 particular case.

2 MS. KING: I agree.

3 CHAIRPERSON REID: Okay.

4 MS. ROSE: At this point, the Board has three cases on the
5 morning agenda of May the 6th, and if you like, you could add one more case to that
6 morning agenda. Then you would have the normal four.

7 CHAIRPERSON REID: I think that would be all right.

8 MS. ROSE: That will be May 6th at 9:30 a.m. No further notice
9 will be given on this application except, I guess, to notify the Applicant.

10 CHAIRPERSON REID: Okay. 9:30 a.m.

11 May 6 --

12 MS. ROSE: Yes.

13 CHAIRPERSON REID: -- it is.

14 MS. ROSE: That's all the matters that we have.

15 CHAIRPERSON REID: Okay. Secretary, would you please call
16 the first case of the day?

17 MS. ROSE: The first case on the agenda for this afternoon is
18 16307, Application of National Child Research Center pursuant to 11 DCMR 3108.1
19 and 3107.2 for a special exception under Section 205 to establish a child
20 development center for 120 students ages 2½ to five years and 28 staff in the
21 basement through third floor of an existing building, and a variance from the
22 provisions of Section 2101 for off-street parking in an R-1-B District at premises
23 3209 Highland Place, N.W., Square 2072, Lot 30 (855 and 866).

24 Would all persons planning to testify in this application please
25 rise to take the oath? Please raise your right hand. Do you swear or affirm that the
26 testimony you are about to give will be the truth, the whole truth, and nothing but the
27 truth? Please say I do.

28 (Chorus of I dos.)

29 MS. ROSE: Would the Applicant please come forward?

1 CHAIRPERSON REID: Let me ask is there anyone here in
2 opposition to this case?

3 MS. ROSE: In opposition?

4 CHAIRPERSON REID: Yes.

5 MS. ROSE: In party.

6 CHAIRPERSON REID: Okay. Are you requesting party status?

7 MR. FRANKLIN: ANC is, too.

8 CHAIRPERSON REID: That's automatic.

9 MR. FRANKLIN: Yes, I understand.

10 CHAIRPERSON REID: ANC is an automatic party. Okay.

11 MR. WATSON: I am Matthew Watson, attorney for the
12 Applicant. With me is Kay Stafford, who is the Director of the school, who will testify.
13 Just preliminarily, I'd like to note there was submitted the first time the case was
14 heard, which this hearing is following because of a D.C. Register Notice problem
15 that was out of the control of the Board, but we did file at that time, and it is in the
16 record the Memorandum from the State Historic Preservation Office giving the
17 determination that the building qualifies as an historic building.

18 This is, as I indicated, an application for special exception and
19 variance from the parking requirement for a child development center which are
20 required by the Regulations to have this special exception. We are not intending to
21 do any construction whatsoever, any changes in the physical plant, and in fact, it's
22 basically a technical correction.

23 The previous Certificate of Occupancy was issued in 1981 for
24 elementary school as well as a nursery school for 90 students, and had never been
25 updated, although they had been licensed and have had more children than that.

26 We would call as our witness to present the facts, Kay Stafford.
27 Should she use that microphone, or can she testify from here? Can people hear?

28 CHAIRPERSON REID: She can testify from where she's sitting
29 unless you have something that you want --

1 MR. WATSON: No.

2 CHAIRPERSON REID: Okay.

3

4 WHEREUPON,

5 KAY STAFFORD

6 was called as a witness by Counsel for the Applicant and, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WATSON:

10 Q Ms. Stafford, would you, for the record, give your name and
11 address?

12 A My name is Kay Stafford, 3209 Highland Place, N.W.,
13 Washington, D.C. 20008.

14 Q What is your relationship with the Applicant, National Child
15 Research Center?

16 A I'm the current Program Administrator/Acting Director.

17 Q Can you describe for the Board the operation of the Center?

18 A It's a nursery school.

19 Q What are the hours of operation?

20 A 8:00 a.m. to 6:00.

21 Q In the last five years, has the number of staff or number of
22 children changed at the center?

23 A No.

24 Q And do you expect now to have any increases in enrollment or
25 staffing?

26 A No.

27 Q And is this application to conform with the continued occupancy
28 to your existing licensed daycare operation?

29 A That's correct.

1 MR. WATSON: With regard to operating the Center as a nursery
2 school, I think, unless the Board will later have questions, it's, I think, relatively
3 understood what a nursery school is, and we won't take the time to describe the
4 functioning during the day and when they have juice and cookies.

5 (Laughter.)

6 BY MR. WATSON:

7 Q With regard to questions in the surrounding area, however, how
8 are students dropped off at the center?

9 A The procedures are that there is a carpool line accessible in the
10 morning for arrivals and at each of the staggered release times. The parents also
11 have the option of parking nearby the school and walking their -- their child into the
12 school.

13 I would say about two-thirds of the families use the carpool lines
14 which are the most efficient way of getting in and out of the neighborhood quickly,
15 and about one-third of the parents either park on Ordway or Highland Place and
16 walk their student into the school or pick them up and take them out.

17 MS. KING: Is there a driveway on the property because it's quite
18 a large property? There's no --

19 THE WITNESS: There's no --

20 MS. KING: -- circular driveway on the property?

21 THE WITNESS: There's a circular sidewalk in the front of the
22 residence.

23 MS. KING: Sidewalk but no driveway?

24 THE WITNESS: But not a driveway, right.

25 MS. KING: Thank you.

26 THE WITNESS: Or semi-circular.

27 BY MR. WATSON:

28 Q Do you foresee any changes in parking area? Have there been
29 consideration of any changes in parking regulations?

1 A We've been asked that about, you know, many times, and we do
2 support the use of the property primarily as a playground and a school. We do not --
3 we're not looking forward to having parking on the property. So this is a statement
4 that the school has made many times. No, I don't foresee any changes.

5 Q And this is to keep it within its historic character?

6 A That's right.

7 Q Like the neighborhood have there been any discussions with
8 regard to the street parking of changing of regulations?

9 A We are under some change in that area. In the last few years
10 since Metro came into the area, we've had to comply with the sort of increased
11 usage, and we, you know, we don't see any changes in what we're dealing with right
12 now, but it has -- it has developed that there are greater constraints on ease of
13 parking in the neighborhood.

14 Q On Ordway Street, directly adjacent to the property, is the
15 parking there now currently basically commuter parking?

16 A Behind us in the back of the property, there's a section that
17 commuters very often fill up very early in the morning. The rest of the area on
18 Ordway Street has residential only zoned parking.

19 Q Would the school be amenable in requesting to have 15 minute
20 parking in the early morning hours going to 8:15, 8:30 to free up that space?

21 A That would be good, yes.

22 Q Is the Center agreeable to meeting with the neighbors before any
23 changes are requested from the city or implemented?

24 A Yes. The Center is very eager to look at any issues in this way
25 with the immediate neighbors.

26 Q Would the Center also be willing to discuss with the neighbors
27 the drop off and pick up plans?

28 A Yes, we would.

29 Q And after meeting with the neighbors and working out potentially

1 changed plans to be requested of the city, is the Center agreeable to filing a report
2 of its drop off and pick up plans with the Board?

3 A Yes, we are.

4 MR. WATSON: I have no further questions.

5 CHAIRPERSON REID: Mr. Franklin?

6 MR. FRANKLIN: The changes you're referring to are solely with
7 respect to the parking limits? You talk about changes that the city might --

8 MR. WATSON: It's solely -- we have --

9 MR. FRANKLIN: Solely parking?

10 MR. WATSON: Solely parking, the city, and the intent would be
11 to have parking for 15 minutes which would permit drop off of students before
12 school, but it would also have the effect of preventing commuters from coming there
13 early in the morning and parking all day.

14 The reason that section doesn't have residential parking permit
15 is that you can't have residential parking permit unless you're abutted by a
16 residence. And since the school is not a residence, there's no residential parking on
17 the south side of Ordway Street.

18 MS. KING: It's the Department of Public Works -- have you had
19 any kind of preliminary discussions with the DPW about whether, you know, is that
20 something -- I don't remember 15 minute parking. Does that exist elsewhere?

21 MR. WATSON: It does. This is a standard parking restriction at
22 daycare centers.

23 MS. KING: Oh, is it? Okay.

24 MR. WATSON: And we have had discussions with Karen
25 Bennefield's office, and they are agreeable.

26 MS. KING: All right. I have no further questions at this time.

27 CHAIRPERSON REID: Okay. I'd like to know where -- where is
28 the -- where exactly is the play area? On the survey, I did not see it so designated.

29 THE WITNESS: Are you looking at it?

1 CHAIRPERSON REID: Yes.

2 THE WITNESS: The play area essentially is every bit of the
3 property other than the two buildings.

4 CHAIRPERSON REID: Than the carriage house and the main
5 building?

6 THE WITNESS: Right. It wraps around from Highland Place to
7 the back of the building, and it goes down to the lower end on Ordway as well.

8 CHAIRPERSON REID: Okay. What about -- Mr. Watson, could
9 you please, for the record, discuss with us the compliance with Section 205?

10 MR. WATSON: Section -- this is with regard to Parking Section?
11 I think I questioned it. We have the definite -- there are parking requirements
12 required which are, I guess, one space for every seven staff except it provides within
13 the Regulations --

14 CHAIRPERSON REID: Well, you -- that, I understand, was that
15 you received a waiver of that.

16 MR. WATSON: We have received the waiver, but that has to
17 then be approved by the Board of Zoning Adjustment in your Order. We are entitled
18 by the Regulations to the waiver, and therefore, filed the --

19 CHAIRPERSON REID: Letter.

20 MR. WATSON: -- letter from the State Historic Preservation
21 officer who was the proper party to make the determination of the historic status of
22 the building.

23 CHAIRPERSON REID: Okay. Thank you.

24 MR. FRANKLIN: To what extent does the historic status of the
25 building have relevance to this particular issue? For example, if the play area takes
26 up everything that isn't really taken up by the improvements, does that play area
27 comply with the minimal standards for play areas considering your enrollment?

28 MR. WATSON: Considerably in excess.

29 MR. FRANKLIN: Considerably in excess of the minimum?

1 MR. WATSON: It's over an acre of ground.

2 MR. FRANKLIN: Okay. That's what it appears to be. If you had
3 a drop off area that -- in the form of a driveway as Mrs. King had asked, is that
4 something, and in other words, you could accommodate that and not fall below the
5 standards for the play area you have. Would that driveway be regarded as some
6 degradation of the historic character of the property?

7 MR. WATSON: We believe that in the past there has been
8 opposition from the neighborhood to have any encroachment into the property by
9 further paved area. It would be difficult to have the driveway in front of the property
10 because if you look on the plat that because of the irregular shape of the property on
11 the eastern side of the property, it's only 20 feet between the building line and the
12 porch.

13 The remainder is sidewalk area to the streets. It's awfully close.
14 It would be difficult to put a drive in front of the building and would probably interfere
15 with both the historic and residential character of the remainder of the property since
16 it would require taking down trees.

17 MR. FRANKLIN: Okay. Thank you.

18 CHAIRPERSON REID: What about adverse impact? Speak to
19 the issue of adverse impact.

20 MR. WATSON: Well, as we have indicated, there is no change.
21 The Department of Public Works indicated that it would have no effect in their
22 submission on traffic in the area. We're not aware of any noise problem that
23 emanates from the building.

24 One, it's -- the property, as we say, is a spacious size which
25 keeps children from being directly adjacent to neighboring properties. The house
26 itself is constructed in an older time, and is a very solidly built property which buffers
27 any noise. We don't believe that any noise comes from the property.

28 We believe there's very little impact on traffic. To the extent
29 there may be any impact from dropping off and picking up, although it's a limited

1 number of children, some walk, some take carpools, we would be agreeable to the
2 suggestion of the ANC that there be a requirement that after the permit issues -- the
3 approval issues that we would meet with the neighbors.

4 We would work out the arrangement. We would file that with the
5 Board. The existence of this nursery school goes back to the 1930s.

6 CHAIRPERSON REID: So to your knowledge, there have not
7 been any complaints from the neighboring property owners?

8 MR. WATSON: We won't say there have not been no
9 complaints. When you have anyplace, there are some neighbors, and they're here
10 to speak as
11 well --

12 CHAIRPERSON REID: Okay.

13 MR. WATSON: -- who believe there's some impact.

14 CHAIRPERSON REID: Some impact, okay.

15 MR. WATSON: There's no living memory prior to the existence
16 of this nursery school.

17 CHAIRPERSON REID: Okay. All right.

18 MS. KING: There must be someone who has been around for
19 more than 30 years?

20 MR. WATSON: I don't think there are in the properties around it.

21 (Laughter.)

22 MR. WATSON: Well, you have to have been there for 67 years.

23 MS. KING: 67. That's right.

24 CHAIRPERSON REID: All right.

25 MR. FRANKLIN: Before my time.

26 (Laughter.)

27 CHAIRPERSON REID: Okay. Cross examination, ANC. Mr.
28 Mendelson, would you like to cross examine?

29 CROSS EXAMINATION

1 BY MR. MENDELSON:

2 Q Good afternoon, I'm Phil Mendelson. I'm with ANC-3C. I have
3 several questions. Ms. Stafford, how long have you been with the Center?

4 A Ten years.

5 Q And are you familiar with our report in this case, which is the
6 letter that I gave you before the hearing --

7 A Yes.

8 Q -- and I sent to Mr. Watson last week?

9 A Yes, I am.

10 Q Do you have any objection to the inclusion of the first three
11 conditions that we cite in the Board's Order?

12 A You have to give me an opportunity to read them.

13 Q Sure.

14 (Pause for witness to read document.)

15 A Okay.

16 Q My question was asked to the first three.

17 A We are in agreement.

18 Q Your answer is yes to my question?

19 A Yes, we can.

20 Q You have no objection to the inclusion of those in the Board's
21 order?

22 A Right. No objection.

23 MR. MENDELSON: Okay. I have no other questions. Thank
24 you.

25 CHAIRPERSON REID: Okay. Thank you. Mr. Watson?

26 MR. WATSON: Just in summary, we ask that it be granted the
27 only --

28 CHAIRPERSON REID: -- procedure first, and then you can --

29 MR. WATSON: I assumed we were going -- I assumed there

1 were no further cross examinations.

2 CHAIRPERSON REID: No, there are no further cross. Thank
3 you.

4 MR. WATSON: I was just saying --

5 CHAIRPERSON REID: I assume you have some closing
6 remarks.

7 MR. WATSON: Okay.

8 CHAIRPERSON REID: Okay. Government reports. We have a
9 letter from DPW which basically is in support of the application, and it says, in part,
10 that's basically the project is required to provide a minimum of seven parking
11 spaces.

12 We note that the site is located in the Cleveland Park Historic
13 District, and the property appears to be a historic landmark. Therefore, the
14 requirement for parking is waived. Will transportation stand for an additional traffic
15 impact that is up with this proposal?

16 We have seen that the Center has been operated for several
17 years without parking. Therefore, the Department will not object to the continuation
18 of Center's use.

19 And then there was a letter from the Historic Preservation that
20 states, in part, this building is either a historic landmark in the D.C. Inventory of
21 historic sites or is located within a Historic District in the D.C. Inventory and
22 contributes to the character of the Historic District in location, design, setting,
23 materials, workmanship, feeling and association.

24 Okay. So next, we'll have the report from the ANC.

25 MR. MENDELSON: Good afternoon. Again, for the record, I'm
26 Phil Mendelson. I'm Chair of the Advisory Neighborhood Commission 3C. I'm here
27 to present the report of the ANC. You should have in the record a letter that I sent
28 on March 25th which states the resolution adopted unanimously with eight
29 Commissioners out of nine present at our meeting on -- our public meeting on March

1 23rd.

2 Our position, in summary, is one of conditional support, and we,
3 on the second page of the letter, I was going to say the second page of the
4 resolution, but that's not quite accurate, we list four conditions. The first is that
5 NCRC will develop a drop off/pick up plan, that the plan will be submitted to NCRC's
6 neighbors and the ANC-3C for comment, and will be made public record by being
7 filed in the record of this case.

8 We're not asking that it be submitted for review by the Board but
9 that it be made a public record by being submitted to the file. The second condition
10 is that NCRC will not object to or in any way discourage any extension of residential
11 permit parking on streets within the area of the school.

12 And the third condition, and I'm sort of summarizing these
13 instead of reading them in their entirety, is that NCRC will develop a proposal for
14 changes in parking regulations for NCRC's street frontage on Highland Place and
15 Ordway Street. The Center fronts on Highland and backs up onto Ordway.

16 And again, that this proposal would be submitted to NCRC's
17 neighbors and the ANC for comment prior to the process that DPW goes through to
18 implement it. The fourth condition that we request is that the special exception be
19 limited to an initial period of five years. This will enable neighbors to testify on the
20 efficacy of these measures should adverse impacts continue.

21 In the course of our ANC's review of this matter, we became
22 aware of the fact that there had been some traffic impacts, and some of the
23 neighbors are not fully satisfied that the school has been as responsive as it should
24 be. We nonetheless feel that the application should be granted, the application
25 that's before you.

26 In addition, it is the impression of some of the neighbors that
27 over the years, the traffic use has changed. I guess some of that has to do with how
28 many of the children who attend the facility are families in the neighborhood who
29 walk to school as opposed to being driven, the nature of families changing, I guess,

1 from being a one working parent to two working parents so that there's more of a
2 use of automobile and dropping off.

3 The point is that apparently there has been some increase over
4 the years in the traffic impacts. The purpose of our requesting this time limit is really
5 to provide a mechanism to monitor the effectiveness of the plans, the two plans that
6 we talk about and that the school has agreed to.

7 To ensure that we are eliminating the adverse impacts, there's a
8 trade-off here, and the trade-off, this is what we went through in our own thinking, is
9 that we could say we don't want you to approve this today, that we want this case to
10 be continued while we work out these plans, and we have the plans finalized, then
11 we all come in here and say we're all happy, approve it.

12 Or we say, and I think this is what the school wants, let's get this
13 over with. They want to get on with their -- the appropriate certificate of occupancy.
14 So let's approve this, but conditionally, and with that trade-off, we feel the time limit
15 is important.

16 I'm sort of second guessing here that there might be some
17 concern that having a time limit means that there's some cost to the school because
18 they have to refile, and I'm not sure how the Board can handle that. I think it's
19 unfortunate that there has been some discussion, I guess outside the hearing, about
20 the costliness of fees, and that should not influence the decision-making process of
21 what is the best way to assure that the school could function while at the same time,
22 there is no adverse impact.

23 I don't know if that means that the Board can waive its fees when
24 the school reapplies, or whether the Board can treat it as a reopening of this case so
25 it wouldn't have to apply new. But in any event, we feel that if there's concern about
26 that, that that should not dictate the need for us to work out these plans.

27 And we are willing for the school to be granted the special
28 exception and variance, but with these conditions, and as I say, the limitation of an
29 initial period of five years so that we're sure that everything works out and the

1 neighbors are satisfied. Thank you very much.

2 CHAIRPERSON REID: Mr. Watson, do you have any cross
3 examination, or are there any questions? Mr. Watson, do you have any?

4 MR. WATSON: We have no questions.

5 CHAIRPERSON REID: None. Okay.

6 MR. FRANKLIN: I have a question. Thank you for your
7 suggestions. They're helpful for us, in my opinion. We refer to NCRC's neighbors.
8 Who is encompassed within the ambit of neighbor for these purposes?

9 MR. MENDELSON: The residents, the homeowners, residents
10 in the area, which is primarily Highland Place. With regard to looking at these plans,
11 because parking would effect Ordway Street, we would include within the meaning
12 of neighbors the residents in the immediate area on Ordway Street as well.

13 MR. FRANKLIN: Can somebody look at that definition and
14 determine who -- whether they're a neighbor or not? I mean should we do it within
15 200 feet? I mean that's our normal standard.

16 MR. MENDELSON: If you're asking in terms of the conditions
17 that we cite, it should be larger than 200 feet. I would look at a map and I would
18 probably take a compass and put the outside point on Newark Street, which is the
19 opposite side of the lot that's across the street.

20 MR. FRANKLIN: Well, I'm only suggesting if we have this kind of
21 condition it ought to be specific so that people know who's encompassed within it.

22 MS. KING: Highland Place is, what, two blocks long?

23 MR. MENDELSON: Something like that.

24 MS. KING: Two, two and a half blocks long?

25 MR. MENDELSON: Yes.

26 MS. KING: And it is very much a unit. There's only one way to
27 get into it and one way to get out of it. So I think whatever definition we adopt, Mr.
28 Franklin, that it should include all the residents on both sides of the street on
29 Highland Place and is it Quebec Place? What is it?

1 MR. MENDELSON: 33rd Place.

2 MS. KING: 33rd Place at the bottom of the street which is this
3 sort of funny little half block to Highland and then half block to a dead end. So
4 certainly all of those people, and then maybe you all can -- and say a block on both
5 sides of -- of Ordway or maybe that's where the 200 feet might come in, but it seems
6 to me that --

7 MR. MENDELSON: I would say probably the 3100, 3200, and
8 3300 blocks of Ordway Street, all of Highland Place, 33rd Place, which is, I'm not
9 sure if there's any houses on it. That's a half block, and Ashley Terrace, which is
10 what I was thinking of.

11 MS. KING: That's the dead end?

12 MR. MENDELSON: Yes.

13 MR. WATSON: Just to correct you, you'd have to modify --

14 MR. FRANKLIN: You're not on the record.

15 MR. WATSON: Matthew Watson. Just to correct you, you'd
16 have to modify. There's an anomaly in this neighborhood on Ordway Street.
17 Although it's 3200 block of Highland, it's the 3000 block of Ordway. The 32nd
18 doesn't go through, and they just continued numbering.

19 (Laughter.)

20 MR. WATSON: So --

21 MR. FRANKLIN: Well, I would suggest to you two gentlemen
22 that if we adopt this condition, it might be useful just to annex this and indicate the
23 boundaries on this so everyone's clear as to who is a neighbor for purposes of
24 involvement. This is in the record.

25 CHAIRPERSON REID: Good idea.

26 MR. MENDELSON: That's fine. And you know, the ANC
27 process is the process. So if there's anybody who's outside the area, the area that
28 we're discussing, who feels they have to comment, the ANC will hear it.

29 MR. FRANKLIN: Whatever. I have no further questions.

1 CHAIRPERSON REID: Ms. King, any further questions?

2 MS. KING: Yes. What is the extent of residential permit parking
3 on Highland Place and Ordway Street? Is it pervasive except the property its body,
4 is it?

5 MR. MENDELSON: It's pervasive with the exception of the
6 frontage both of the school on Highland Place and on Ordway Street, and then also
7 the 3300 block of Highland Place, as I understand it. I think somebody will testify to
8 this.

9 MS. KING: Has the -- I mean, your item number 2 seems to
10 indicate that NCRC has been fighting you on --

11 MR. MENDELSON: No.

12 MS. KING: No, they haven't.

13 MR. MENDELSON: No.

14 MS. KING: So what you're asking, essentially, I just wanted to
15 clarify --

16 MR. MENDELSON: It's just reassurance.

17 MS. KING: -- you're asking them not to do what they haven't
18 done before?

19 MR. MENDELSON: Correct.

20 MS. KING: Okay.

21 MR. MENDELSON: Which is why I think they agreed to --

22 MS. KING: Yes, they do. I have no further questions.

23 MS. ROSE: Madam Chair, under the condition, when would the
24 record be closed, or would it just be open until this document came in, the
25 Agreement?

26 MR. MENDELSON: Well, I'm not exactly sure how the Board --
27 what the -- how the Board considers its procedures would apply. Our thinking was
28 that the document would simply be filed, that the Board could proceed with the
29 decision now, but that the decision would allow that this document could be filed so

1 that it is in the public record.

2 So if the Board is able to close its record for purposes of
3 decision-making with the exception of allowing this document to come in after the
4 decision.

5 MS. BAILEY: Would not the document contain the boundaries
6 and other information that the Board would need concerning the conditions? In
7 other words, the document that you plan to submit, would that not help to put some
8 definition to the conditions?

9 MR. MENDELSON: Not as we've stated them. Not as we've
10 stated them, but that's also, again, a reason why we have the fourth condition, which
11 is the five year period. So if it turns out there are problems with the drop off/pick up
12 plan and with the parking proposal or changes that we can revisit this and work it
13 out.

14 But our -- I know this is unusual. I'm seeing some interesting
15 expressions from the Staff.

16 MS. KING: Tracey, it's analogous, it seems to me, to the
17 meeting -- to the case we had this morning.

18 MS. ROSE: I thought you would say that.

19 (Laughter.)

20 MS. ROSE: I didn't know if he was trying to get the Board to -- a
21 lot of times people want the Board to incorporate the agreements that they have with
22 the community.

23 MR. MENDELSON: No.

24 MS. KING: No, he just wants it to be on the record. So when
25 they come back, they can say look, this is what they agreed to, and they didn't live
26 up to it, I think, is why you want it on the official record. Is that right?

27 MR. MENDELSON: Yes.

28 MS. ROSE: And you want them to agree to submit to the ANC
29 the agreement that would reflect these conditions.

1 MR. MENDELSON: Yes. The way we worded it, I believe, is we
2 submit it to the neighbors in ANC-3C, and I'm looking at number 1 for comment, and
3 after any revisions, the plan will be made a public record.

4 MS. KING: You just want it to be a matter of record that they
5 have agreed to submit to you.

6 MR. MENDELSON: Yes. And then we all have access to that
7 document.

8 MS. ROSE: And the plan the Board will be approving would be
9 on the record before it makes its decision?

10 MS. KING: We wouldn't be approving the plan. We would be,
11 by inference, am I not correct, Madam Chair?

12 CHAIRPERSON REID: No, you're correct.

13 MS. KING: We're just simply saying that all the parties have
14 promised to do this, and when they have worked it out, they're going to file it with us,
15 and it just becomes part of the record. We don't approve or disapprove.

16 MR. MENDELSON: Correct.

17 MS. ROSE: Leaving it to them to make, you know, to determine
18 the acceptability among themselves is not going to be something that we're going to
19 require.

20 MS. ROSE: Okay.

21 MR. FRANKLIN: And if it turns out that there isn't a consensus
22 or their neighbors feel that the plan is inadequate, the plan is filed, but we revisit that
23 five years hence.

24 MR. MENDELSON: Correct. And I have a sense that
25 everybody's going to work well together.

26 MR. WATSON: I assume so.

27 CHAIRPERSON REID: It appears that we have a consensus
28 among the Applicant, and the ANC, and the community to try to work out any
29 differences, and they seem to be amenable to addressing the concerns that you

1 have indicated. So I don't see that as being a problem here.

2 MR. MENDELSON: If you're done with me.

3 CHAIRPERSON REID: Yes.

4 MR. MENDELSON: Thank you very much.

5 CHAIRPERSON REID: Thank you very much for your report. It
6 does indicate that there was a quorum present at the meeting, and that the vote was
7 unanimous to support this particular application. So it was certainly given the great
8 weight which it's entitled.

9 And we also, again, commend you on working -- trying to work
10 with the Applicant to mitigate the problem areas to come to an amenable solution to
11 having this go forward.

12 MR. MENDELSON: Thank you.

13 CHAIRPERSON REID: Thank you. All right. Next is going to be
14 the persons in support of this application. Are there any other persons that would
15 like to testify in support?

16 MR. WATSON: --

17 CHAIRPERSON REID: Yes, come together please. And I ask
18 that you try not to be redundant or repetitive. I said I would ask that you try not to be
19 redundant or repetitive and that you, when you speak, try to let things flow as quickly
20 as possible. Do you have someone that you would like to speak on your behalf, or
21 do you all want to speak individually?

22 MS. PETERS: Individually.

23 CHAIRPERSON REID: Proceed. Your name?

24 MS. PETERS: I will start. I'm Mary Peters. I'm at 3250
25 Highland Place, which is at the corner of 33rd Place and Highland. First of all, as a
26 neighbor, I'm very appreciative of their desire to maintain the residential and historic
27 nature of the building and what they're doing in the parking particularly in thinking
28 about the Ordway Street drop off.

29 As a neighbor, the impact that we have at, particularly, the 11:30

1 pick up and the 3:30 in the afternoon pick up is substantial, and I at the intersection
2 find that there are a lot of parents who basically abandon their cars to go pick up the
3 kids. These are that third of the group who do not get into the carpool line.

4 And so I want to bring to the attention that this problem has been
5 there. I've lived in the house I have for 12 years. So I am well aware that the
6 problem is not getting any better. It is, in fact, getting worse. So I just wanted to
7 emphasize that what the ANC brought up is a very important thing to do.

8 CHAIRPERSON REID: So basically, you're in support with
9 some concerns that you want to address, is that correct?

10 MS. PETERS: Yes. I'm in support of what they are doing, but I
11 am very concerned and in support of what the ANC wishes to be done in the
12 neighborhood and with the neighbors.

13 CHAIRPERSON REID: Okay. So you support the Applicant and
14 the conditions that have been suggested by the ANC?

15 MS. PETERS: Right.

16 CHAIRPERSON REID: Thank you.

17 MS. HAAS: My name is Barbara Haas. We live at 3200
18 Highland Place, which is across the street and down a little bit from the school north,
19 I guess.

20 CHAIRPERSON REID: East.

21 MS. HAAS: East. And I, too, appreciate the effort to find a
22 solution to this problem. We have had great difficulty with traffic in front of our
23 home, our driveway being blocked during pick up times particularly for the school. I
24 missed the ANC meeting because I was out of town.

25 I agree with what the ANC has agreed to do, but I would suggest
26 that -- had I been there, I would have suggested that the conditions of this resolution
27 be strengthened a bit because I think that there is no reason why some of these
28 problems can't be resolved and fairly quickly.

29 And I would have suggested also that perhaps a time limit be put

1 on the effort to put together plans that the neighbors could review with the school.
2 I'd like to see, you know, some kind of timeframe for when those plans will be
3 worked out, and I look forward to working with the school to do that.

4 We have -- as I left to come down here today, which was at
5 about 11:15 to catch the subway, there were cars lined up for the pick up, and there
6 was -- and I have reason to believe that they were all waiting to pick up children at
7 the school.

8 There was one car that had parked with its front end on the curb,
9 and its back end out in the middle of the street, and the street has a curve right
10 where the school is located which makes problem for two-way traffic. And there was
11 another car, a yellow car, that was double-parked, and there was no driver in it, and
12 it was also, I think, was in the line of the edge of the school property.

13 And this kind of thing, to me, is a big problem. We have difficulty
14 getting out of our driveway because often it's blocked even though we're on the
15 other side of the street. And I guess that about sums up my concerns.

16 MR. FRANKLIN: Have you lodged your concerns to the
17 attention of the school in the past?

18 MS. HAAS: I did. I sent a letter to the Head Mistress in the fall,
19 in November because, actually because there were a couple of parents who got in a
20 fight about a parking place out front, and I thought it was inappropriate for the
21 children to see their parents fighting over who was in line, and this was a line of
22 double-parked cars to begin with.

23 And so I did send a letter to the school thinking that road rage
24 was not appropriate on Highland Place.

25 MR. FRANKLIN: Did you get a satisfactory response?

26 MS. HAAS: Well, I got a letter back basically saying that they
27 were going to send a note to the parents to remind them once again.

28 MR. FRANKLIN: Not to fight in the public streets.

29 (Laughter.)

1 MS. HAAS: Well, it wasn't quite that strong. It was reminding
2 parents to review the procedures, and frankly, I haven't seen a lot of difference in
3 what's going on out there since then.

4 CHAIRPERSON REID: How long ago was the letter sent?

5 MS. HAAS: It was sent in November. And I received a quick -- it
6 was a fairly quick response with a copy of something that was sent out to the
7 parents with a P.S. on it about paying attention to the rules and regulations for it.

8 CHAIRPERSON REID: But you're not seeing, as a result of your
9 letter, a lot of improvement in that situation?

10 MS. HAAS: No, I'm not. And there was one other item that I
11 wanted to bring to the attention of the Committee and that is that often banners are
12 put out in front of the school, and this is our neighborhood.

13 And it's fine to have banners about cake sales or whatever is
14 going on, festivals, et cetera, but I think that it is probably fair to say that we would
15 appreciate it if they weren't there for more than a week before the event takes place.

16 CHAIRPERSON REID: Perhaps that could be something that
17 could be included in the agreement that we were speaking of with the ANC.

18 MS. HAAS: Fine idea.

19 CHAIRPERSON REID: Okay.

20 MS. HAAS: That's about it.

21 MS. NAMIAN: My name is Esther Namian, and I live at 3312
22 Newark Street, N.W., and so, of course, I'd like to be sure that Newark Street is
23 included in the traffic pattern that was discussed earlier. Newark Street is a main
24 artery for the parents to bring the children in and out of the school.

25 And I live -- when they -- mostly when they -- I'm affected mostly
26 when they exit because when they exit, the vehicles travel up one block, and then
27 there's a stop sign at Newark Street. And the congestion starts there, they turn right
28 to go to 34th Street, and at 34th and Newark, that's a very dangerous intersection.

29 We have an accident there every couple of weeks or so. And

1 the cars even back up. My house is the fifth house down from Newark -- from 34th
2 Street, and the cars do back up, and I, you know, there is that big concern about
3 accidents.

4 So I also would like to say that I haven't been there 67 years, but
5 this month I've lived in this house for 31 years, and so I have seen the change. And
6 I would also say that my children were very fortunate to go to this wonderful nursery
7 school. I've had children there from '68 to '71.

8 However, I notice that the program has changed over the years.
9 I don't remember that it went -- school kept until 6:00 back then, but I understand,
10 you know, the differences in the needs today, too. But at 11:30 and at 3:30, there
11 really -- the congestion with everyone trying to hurry to get away from the school,
12 and in the morning when they come in.

13 Everybody is meeting a deadline in the morning to get their kid to
14 school. The other thing that wasn't mentioned here today, and I think we really
15 should think about it is, you know, when my kids went to school there, there were
16 many neighborhood children who went to school and we walked. They walked. But
17 now, they're most of them are from Maryland, the tags I see, and a lot from Virginia,
18 too.

19 However, when they drop their children off now, the children are
20 in carseats. A law was to -- there were teachers out to take the children out of the
21 cars and into the school, and I don't always see that. I also have to walk by the
22 school four mornings a week because I go down to the gym on Connecticut Avenue.

23 So at 9:00 I'm walking there, and I do see the double-parking as
24 the others have said. And I also I've noticed a bus lately, but I don't know. We didn't
25 used to have buses come in, but I don't know. The program has changed, too, but I
26 don't know. But there is a bus that's at Newark Street in the morning.

27 And I'm in favor of doing, you know, of cooperating where we
28 can, but I do think we should go on record of being concerned about, particularly if
29 there's an increase in student number from -- say, I heard a number go to 90 in

1 1981. I didn't hear what that was all about, but I do see a number of 120 in the
2 original regulations that were made long before there was the traffic and vans that
3 people and children travel in today.

4 CHAIRPERSON REID: Thank you. Is there any cross
5 examination of these witnesses?

6 MR. WATSON: We have these witnesses.

7 CHAIRPERSON REID: Oh, I'm sorry. I didn't realize that you --
8 I did not mean to not acknowledge you. Sorry.

9 MR. WILLIAMS: Good afternoon, ladies and gentlemen of the
10 Board. My name is Lindsley Williams. I live at 3307 Highland Place, N.W.,
11 Washington, D.C. This is located one physical block away to the west from the
12 subject site. Let me just describe for the Board the traffic flow in the area as part of
13 getting the facts.

14 Before you do happen -- if I'm showing you right now something
15 that I'll turn in as an exhibit if you don't already have it. This is an older plat of the
16 area, and it depicts on its top Ordway Street. Highland is the next street down the
17 sheet. Then below that is Newark. Then below that is a street that's labeled
18 Milwaukee, which is now Macomb Street.

19 (Laughter.)

20 MR. WILLIAMS: I'm just identifying this for the record. Do you
21 have this diagram in your record?

22 CHAIRPERSON REID: I don't believe so.

23 MR. WILLIAMS: Let me submit it so that we can get this in.
24 What I wanted to do in these remarks is to characterize the streets as 34th Street at
25 the western end of the overall area is a minor arterial in the District of Columbia
26 scheme of things. It has two northbound lanes, one southbound lane.

27 Ordway Street is a local street as is Newark Street in terms of
28 the highway designation system. Macomb Street is, I believe, a minor arterial.
29 Highland is also a local street as is 33rd and Ashley. This diagram that I am

1 submitting has some historically interesting elements on it including the continuation
2 of Reno Road through my backyard. That has long since been closed.

3 Ashley Terrace also appears to be connected to Ordway on this.
4 That, again, is not the case. It dead ends very close to Ordway. In the course of the
5 earlier remarks, Mr. Franklin asked about the nature of the property, and I think it
6 would be fair to add that in addition to having landscaping and play areas, it is
7 populated with a large number of very mature trees.

8 It is also the characteristic of the site that it's at a different grade
9 level than the grade that's common along both Highland Place and particularly from
10 Ordway. It rises approximately five feet from the plane of Highland Place and
11 considerably more than that to get up off of Ordway, and thus, the idea of putting in
12 a driveway or parking area, if that's even needed, is something that would create a
13 substantial difficulty in addition to which it would desecrate the area that we value.

14 When the case was read at the beginning of the day by Ms.
15 Rose, she indicated that it was to establish the use. I think it's important in the
16 course of the deliberations of the Board to have it be recognized that really what the
17 case is about is to continue to operate a use that's been there for some period of
18 time, and potentially to think about it as an expansion of that use from the numbers
19 that Mr. Watson identified earlier on the order of 90 up to 120, and likewise, to clarify
20 the number of staff.

21 In that light, I'm not as certain about the degree of variance relief
22 as may be stated in the letter that you have received because to a certain extent,
23 there were staff and students there already. And those uses were put in before the
24 schedule of parking requirements was amended in the 1980's to put in this one for
25 seven rule.

26 My sense is if there is any required parking at all that the number
27 relates to probably just one or two spaces as being required. The rest would be
28 excused as they were not there when the regulations took effect. That's a legal
29 matter which Mr. Watson can address at a later point if he chooses to do so.

1 The real reason I'm here relates to the residential permit parking
2 program which is addressed partly in the ANC's resolution. Living where I do, I see
3 a lot of the traffic coming in in the morning. I'm not troubled by the departure
4 problem or the queuing problem in the afternoon. I'm away from all that.

5 Highland Place and the 3300 block where I live is actually a one-
6 way segment of Highland leading off of 34th Street towards NCRC but so oriented in
7 such a way that the people travel down 30 Highland Place to get onto Highland in
8 front of the school, they're on the opposite side of Highland from the school itself,
9 and thus, they have to make a U-turn or do something.

10 And basically, it's an inconvenient way to get in. And so my
11 sense is that doesn't happen. What did happen a few years ago, and perhaps Ms.
12 Peters can remember the date more precisely than I did, but there came to be a
13 petition submitted by the neighbors in that area of Highland Place to establish the
14 residential permit parking system.

15 And what I can tell you happened on that date, the day those
16 signs went up is that the parking for staff moved off of the segment of Highland in
17 front of the school where they'd been able to park with relative ease, and they
18 moved, as you might suspect, just like water finding its own level, the parking of the
19 staff moved to the area where there was no restriction.

20 And that area of no restriction includes the 3300 block of
21 Highland Place, which is still not under that system, as well as the first half of 33rd
22 Place between Highland and Newark, and that is because the 3300 Highland house
23 goes back halfway. And thus, since Highland and the 3300 block does not have
24 residential permit parking for the depth of that lot, there is equally no residential
25 permit parking on the corner at the edge of 33rd Place.

26 And so this creates a small zone of opportunity for staff to park
27 in, and indeed, they do. It fills up, and what we suffer from now, it isn't an awful
28 suffering, but it's a dilemma that we come back and find that the spaces are
29 basically taken up beginning at about 8:30 by staff that are going off with

1 professional looking briefcases and things going down to NCRC.

2 And it's no great secret that that's what's going on. The concern
3 that my neighbors had was that since we did hear something about this a few years
4 back when the residential permit parking, oh my gosh, where are we going to park.
5 We know now where they're going to park. We didn't want to see a further
6 expression or an anxiety propelled officially through the school channels saying
7 please don't do that to us. We won't have a place to park.

8 And so this led us in discussions with Mr. Watson and with the
9 school, and that's why we're thinking that with the current scheme of things, it may
10 continue to work, particularly if we can persuade DPW to change the rules of parking
11 along the unprotected or the unresidential permit parking section along Ordway, that
12 it will provide more opportunities for staff to park down there after the restricted
13 period ends, and that everything should work out pretty well.

14 The other observation I can give you from direct study of the site
15 at various hours are these. There is some lighting which is currently affixed to the
16 Ordway Street building which is called the --

17 MS. KING: The playhouse?

18 MR. WILLIAMS: The play -- not the playhouse.

19 MS. KING: The carriage house?

20 MR. WILLIAMS: The carriage house, which, in addition to
21 illuminating their own property manages to blast out -- sounds like the Luray school
22 case, doesn't it. Anyway, it's not suitably established. The rays of it are not
23 confined to the school property, and it would seem to me that the usual standard
24 condition of the lighting should be so arranged so that the rays are confined to the
25 property of the subject site would be in order.

26 I think you also may wish to clarify with Mr. Watson the hours of
27 operation because it's my understanding that from time-to-time, perhaps once a
28 month, there is some evening hours in which the program is operated without
29 detriment to the neighborhood, but it would be a shame to have the order be limited

1 and then find them back here in front of us.

2 And finally, I would comment on the fact that properties such as
3 this, even though this to my knowledge has never happened, but properties such as
4 this from time-to-time become attractive as a place for other organizations to rent out
5 from time-to-time.

6 To the best of my knowledge, this has not happened, and I think
7 that if it were to become a rental facility for other organizations with other hours of
8 operation, it would present problems the likes of which you haven't heard today.
9 And one place to stop that is with you. Thank you very much. If you have any
10 questions, I'll be glad to answer them.

11 MS. KING: Does the school provide anybody on the sidewalk
12 and on the street to help regulate the -- maybe I should be asking the Applicant, but
13 I mean have any of you ever seen anybody from the school out there trying to
14 control the situation?

15 MS. HAAS: I have.

16 MS. KING: You have?

17 MS. HAAS: Yes.

18 MS. KING: Not effectively or not on a regular basis?

19 MS. HAAS: Not when our driveway is blocked.

20 CHAIRPERSON REID: Speak into the microphone please.

21 MS. HAAS: Well, I'm not sure what his job description is, but he
22 -- I have observed that he writes down carpool numbers from cars that are lined up,
23 the double-parked cars along the street. And what happens after that, I'm not sure I
24 can answer that. I guess they line the children. Again, I'm guessing.

25 MS. KING: I'll ask the Applicant when they come up. I have no
26 further questions.

27 CHAIRPERSON REID: Okay. You're done.

28 MR. WILLIAMS: Could I just add one more thing and that is, as
29 you consider the question of the time limit, I think you'll notice that the ANC has

1 suggested that the special exception be limited to a certain period of time that's
2 within the scope of their resolution.

3 To my way of thinking, a variance is something which runs with
4 the land. And as long as the use is there and the number of staff doesn't change so
5 as to change the parking schedule, the Applicant need not reappear before this
6 Board for the variance question. Thank you.

7 CHAIRPERSON REID: Thank you. Let's see. Mr. Watson, do
8 you have any cross examination?

9 MR. WATSON: We have no cross examination.

10 CHAIRPERSON REID: Okay. Mr. Mendelson? Mr. Mendelson,
11 do you have any cross examination questions?

12 MR. MENDELSON: No.

13 CHAIRPERSON REID: Okay. Thank you. Are there any
14 persons in opposition to this application? Okay. Closing remarks from the
15 Applicant.

16 MS. KING: Could you all address the question of whether, in
17 addition to what the ANC has recommended, you couldn't have somebody on the
18 street to sort of knock people's heads together and get them not to be so wicked?

19 MS. STAFFORD: In the dismissal times, we try to expedite the
20 traffic through the area as rapidly as possible by having currently our groundskeeper
21 go down the line collecting numbers, which he transfers to a staff member who is on
22 the front porch.

23 She gets the teacher of that child to prepare the child to get them
24 down the steps, down to the end of the sidewalk and ready to enter the car as soon
25 as it pulls up, puts the child in the carseat, secures the seatbelt, and sends them on
26 their way.

27 In the first few weeks of school, this process takes about 15 to
28 20 minutes. Once it's worked out, we are able to begin carpool and get everyone
29 through it in about ten minutes. These are procedures that I'm more than happy to,

1 you know, share with the neighbors, to discuss, to brainstorm, do whatever we can
2 do.

3 They've been in place for the ten years that I've been there, but if
4 they're not satisfactory, we need to go back to the table and talk.

5 MS. KING: What do you think is a reasonable amount of time for
6 you to prepare this plan for submission to the neighbors and the ANC?

7 MS. STAFFORD: What we can do is meet immediately in terms
8 of where we are now. I think it, you know, it might be good to put our heads together
9 on how long that will take them to get a meeting organized and back and forth a bit.

10 MS. KING: You're prepared to begin immediately to submit a
11 plan immediately to the ANC and the neighbors?

12 MS. STAFFORD: What we can do is submit immediately what
13 we have, what we're operating under, and you know, begin the dialogue.

14 MS. KING: Immediately?

15 MS. STAFFORD: Yes.

16 MR. WATSON: We are not averse. We should say prior to the
17 beginning of this case, we gave notice to all of the surrounding area to have a
18 meeting, and it was not attended.

19 MS. KING: And this question of lighting?

20 MS. STAFFORD: I wasn't aware of the lighting difficulty, and I
21 imagine that's something that can be, again, addressed immediately by having the
22 Vector Security people come out, take a look at the light, and see if they can shoot it
23 in an area that does -- would be confined to the property.

24 MR. FRANKLIN: I have a question. The first condition that the
25 ANC has recommended in which you stated earlier after reading that you had no
26 difficulty with talks of providing sanctions for violative. Have you ever sanctioned
27 parents?

28 MS. STAFFORD: If I'm aware of an individual, I will speak to
29 that individual personally. I have never sanctioned an individual or community.

1 Sometimes difficulties arise on the street, and I cannot ascertain who it was, if it was
2 a delivery person or a neighbor.

3 In other words, I may not get to the bottom of who it is.

4 CHAIRPERSON REID: Has it been effective?

5 MS. STAFFORD: I hope it has. I think that the incidents that the
6 neighbors have addressed, I certainly don't question that these things do occur.
7 What we want to do is try to contain and maintain as safe a neighborhood as
8 possible.

9 If sanctions is something we need to discuss, I'm happy to do it.
10 I don't know quite how we're going to be able to do that, but I'd be happy to
11 brainstorm about that.

12 MR. FRANKLIN: In a particularly egregious case, what would a
13 sanction be?

14 MR. WATSON: To the extent that they have discussed things
15 that are contrary to the District of Columbia Traffic Regulations, one can have a car
16 ticketed. If this is a situation of blocking driveways, a situation of double parking,
17 these are violations of the District of Columbia Traffic Regulations. And if it reached
18 that point, we don't believe it would, but if it reached that point, one could request
19 that they be ticketed.

20 MS. KING: A citizens arrest --

21 (Laughter.)

22 MS. KING: -- or are you going to produce a police person on 15
23 minute notice?

24 MR. WATSON: Reasonably close by to act on this, but not 15
25 minutes.

26 MS. STAFFORD: We have one in the parent body, but he hasn't
27 ticketed anyone.

28 CHAIRPERSON REID: The concerns that have been aired here
29 today, obviously, there is a problem, and if you haven't been made aware of those

1 problems, it appears to me that if you have a mechanism in place where you are
2 doing something to try to alleviate the problem, however, that does not seem to be
3 effective, then perhaps you look at what you can do to try to do a better job because
4 taking down the license plate numbers and speaking to the parents, I know for a
5 fact, being a parent with a child in elementary school, that does not always work.

6 Unless you have, as Mr. Franklin mentioned, something that
7 would be a sanction or some type of penalty that would dissuade the parents from
8 doing otherwise, it's not going to work.

9 MR. FRANKLIN: Do you have a waiting list to get in?

10 MS. STAFFORD: We do.

11 MR. FRANKLIN: I suppose the ultimate sanction would be expel
12 the student.

13 CHAIRPERSON REID: Perhaps a remedy in working out the
14 agreement would be the areas that you would discuss with them since they were the
15 ones who left that as a possibility in the first place if they have some suggestions
16 they feel would be effective to help you with that matter.

17 The other thing I had was the traffic problem on 34th Street and
18 is it Newark that was brought up by one of the witnesses here, are you aware of that
19 problem?

20 MR. WATSON: There was traffic referred to. I think we have to
21 say, though, even if every child drove themselves to the school, the volume of traffic
22 on Newark Street it would be totally unnoticed. We're talking about, you know, in the
23 order of 30 cars or so since there's some carpool, there's carpooling, and there's
24 walking to school.

25 Newark Street in a general time probably has 30, 40 cars a
26 minute going by. We will certainly look into that question, but impacting the flow of
27 traffic on Newark Street would be awfully difficult with our size compared to the
28 traffic there because that is a major east-west corridor.

29 CHAIRPERSON REID: So you're saying, basically, Mr. Watson,

1 the traffic problem that has been discussed is not one that is necessarily caused by
2 the daycare center?

3 MR. WATSON: Certainly on Newark Street. We don't dispute
4 that cars do pick up on Highland Place as well as on Ordway Street. On Newark
5 Street, the cars do drive through there, but it is such a small portion of the total traffic
6 that goes by on Newark Street.

7 Similarly, I'm sure Mr. Williams is absolutely correct that there
8 are people who park there on the street and walk off with their briefcases. We
9 believe that they're more likely walking down to the Cleveland Park Metro Station.
10 Nursery school teachers are generally not the briefcase carrying type of people.

11 The other thing we should comment is they are absolutely
12 correct that a bus does arrive. In fact, three buses arrive, but we should note that
13 they are District of Columbia Public School buses that arrive, and we provide special
14 education for students who are provided by the D.C. Public Schools. They are not
15 our school buses. They are D.C. Public Schools' school buses, and they do drop
16 three children.

17 They use small buses, and I will not, for one say that the
18 transportation plans of the District schools are efficient, but three children are
19 dropped in three different buses.

20 CHAIRPERSON REID: You -- I understand at one time you had
21 a staff member who went to the car as it drove up to take the children out of the
22 carseat rather than having to park or stop their car to physically take them in?

23 MS. STAFFORD: That's right. We do.

24 CHAIRPERSON REID: You do or do not?

25 MS. STAFFORD: We do. We do that on a routine basis both at
26 arrivals and dismissals. Any car that is in the carpool line, the driver is to remain in
27 the driver's seat, not open their driver's side door, and pull to the curb, where the
28 child is waiting, with their hand held by a staff member, a teacher, and then they are
29 put in their carseat, buckled in, and then they are to move down the street.

1 MS. KING: How many children constitute a carpool?

2 MS. STAFFORD: It could be as small as one. For convenience
3 sake, families may use the line. As many as three children, perhaps four in a
4 vehicle, but quite frequently, it's one or two.

5 CHAIRPERSON REID: All these things, I'm sure, will be
6 addressed in the drop off/pick up plan of the agreement to the satisfaction of the
7 community.

MS. STAFFORD: That's right.

8 CHAIRPERSON REID: Mr. Watson, you have something else?

9 MR. WATSON: I would just like to summarize. We ask that it be
10 granted. We are amenable to meeting as quickly as possible with the ANC as well
11 as the immediate neighbors there. I would expect, in terms of the order, that the
12 ANC and the school will have no difficulty agreeing as to what constitutes the
13 neighborhood.

14 And in fact, if the point be, we could ask the ANC to designate
15 what constitutes the neighborhood for meeting with. There has been a good
16 working relationship and if that was done. I do differ, however, on the length of time.
17 We have to recognize that this is an institution that's been there at least 68 years.

18 The first certificate of occupancy was in 1930 and has been a
19 good neighbor, has, in fact, served the neighborhood and still continues to serve the
20 neighborhood. The original Order after the first hearing granted it for 15 years. One
21 might do it slightly shorter than that, but I think five years is too short.

22 What was alluded to by way of cost is a problem we have in the
23 city that the fee for applying for this sort of special exception is \$25 per child with a
24 maximum of \$2,500. It's \$2,500 application fee because the District puts a premium
25 on quality child care.

26 And we think to space that -- in effect, what we would be saying
27 is that the BZA process would cost \$5 per child per year roughly, which is a fairly
28 substantial thing. We would recommend that it be longer than five years, and
29 believe that a ten-year period might reasonably apply.

1 With regard to Mr. Williams' comment as to the variance on
2 parking, I think he is right. A variance, once granted, is granted. If you grant the
3 variance, I don't think it has a time limit on it. The time limit that the Board puts on is
4 for special exceptions.

5 MS. KING: Does the variance for them not to have parking on
6 the site.

7 MR. WATSON: Not to have parking on the site.

8 MS. KING: Which they can't anyway, because of the historic --

9 MR. WATSON: That's right. So we would request that it be
10 granted, and we would also like it if you could do it as quickly as possible so we can
11 come into compliance with all the District laws.

12 MS. KING: We're going to be able to dispose of it today, Mr.
13 Franklin?

14 MR. FRANKLIN: Sure.

15 CHAIRPERSON REID: Absolutely. Let's do it.

16 MS. ROSE: May I just say one thing out of respect to your
17 authority, and perhaps I missed something, but what did -- in approving this case,
18 you're essentially saying that there are no substantial-- there is no substantial
19 detriment. And clearly, on some issues with regard to traffic, parking, there are
20 problems with the case.

21 And what the Board is about to allow to happen is for the
22 Applicant to come after a decision has been made come up with a plan for picking
23 up children and eliminating the parking problems. Therefore, enforceability of that
24 plan will not be in the Board's Order because you're approving what's before you
25 currently, today.

26 And I just want -- I didn't know if the neighbors were aware of
27 that fact, but I don't think that it would be in, whatever the agreement they come up
28 with, would be enforceable in court, but would not be enforceable by the Board's
29 Order.

1 MS. KING: The only question is, I mean the neighbors who
2 spoke about the problems made it clear that they were testifying in support of the
3 application and in support of the ANC's plan for how to overcome the problems. I
4 don't see this as being a matter that will end up in litigation.

5 MR. FRANKLIN: I think your point is well taken. I think that
6 maybe the thing to do is to address it in some way in the final Order so that should it
7 occur that there's some inability to agree that we can reopen the matter. Maybe
8 that's the way to do it.

9 MS. KING: Is that a possibility?

10 MS. ROSE: That's an option. One other option would be to
11 decide this case after the parties or participants have had an opportunity to discuss
12 it and submit it to the Board, let the Board take a look at it, and approve or
13 disapprove it at a meeting date.

14 MR. WATSON: Our difficulty is that we remain in technical
15 noncompliance with the childcare regulations in the District by having more students
16 than are permitted by the existing Certificate of Occupancy.

17 Even though there's no question that the space qualifies in the
18 District for having the greater number of students, it doesn't meet the technical
19 requirement to check off the box of the Certificate of Occupancy.

20 MS. BAILEY: But you're not being fined. As long as it's before
21 the Board, you're on hold until this matter is resolved.

22 MR. WATSON: Well, that's not clear because they have now
23 issued, again, issued a permit at the lower number of students with the indication
24 that it is to be reduced by attrition.

25 MS. BAILEY: Are you being fined?

26 MR. WATSON: We have not been fined, but I don't think there's
27 any clear indication that we could not be fined.

28 MR. FRANKLIN: Well, it seems to me that we could have a
29 bench decision that approved the variance and the use, could we not, and --

1 MS. ROSE: The use is the special exception though.

2 MR. FRANKLIN: Well, okay.

3 MS. ROSE: That's the whole application.

4 CHAIRPERSON REID: Well, we're thinking -- well, could we
5 include within our conditions the issues, addressing the issues that have been raised
6 as well as the issues that Connolly had for child development centers. And with
7 regard to the agreement between the ANC and the Applicant to allow, Ms. Rose?

8 MS. ROSE: Yes.

9 CHAIRPERSON REID: In regard to that, that agreement, even
10 though we can condition this particular Order, we would not be able to, you're saying
11 with that, we would not have the control over the agreement or any compliance
12 therewith?

13 MS. ROSE: I think it just says to submit it --

14 MR. WATSON: Except I would say it's a practical matter --

15 MS. ROSE: -- to the residents now. Go ahead.

16 MR. WATSON: What I think this represents is that there has
17 been, over time, and I think currently a good working relationship with the ANC, with
18 the neighbors. And yes, there are clearly some irritations. I'm not sure they rise to
19 the level of adverse impact that you raised there.

20 There's a problem, but by its very nature, any daycare center
21 which is set up anywhere in the city are going to have people who are dropped off
22 and picked up there. And I guess I differ with you as to whether or not that is an
23 adverse impact. That's not to say we don't want to minimize to the absolute extent
24 possible.

25 I think we have a situation here where there has been
26 agreement. The ANC has indicated they would like to go through with this process,
27 and we could. And I don't think there's a problem in saying that it doesn't have the
28 level of adverse impact. We are not arguing that just because we want to agree with
29 the community.

1 I think were the situation to come up if there was a school that
2 didn't want to agree with anything further, that there could not be a finding that there
3 was a sufficiently adverse impact on the community to preclude granting of a special
4 exception, or you'd have to deny a special exception to every nursery school that
5 had any cars coming to it to drop off and leave off.

6 But I don't think we have to reach that. I really do think that you
7 can grant this, and that we can go ahead and put on the record. I think Sunshine
8 really does work, and I think it's an innovative proposal by the Advisory
9 Neighborhood Commission that requires it to be in a recorded form, that in future
10 years when there are different Commissioners and likely to be different neighbors,
11 but still NCRC there, that people will be able to go back to it, and there will be a
12 standard.

13 And frankly, I think that's probably more effective than the
14 enforcement that often occurs by the city of Board Orders.

15 MR. FRANKLIN: I do think we can also have an Order that
16 simply adopts the performance standards that have been suggested. The Order
17 itself will say there shall be a plan that is -- that will note to the greatest practical
18 extent eliminate double and triple parking on Highland Place or Ordway Street, et
19 cetera, that that plan will be submitted to the neighbors for their comment and
20 approval, that NCRC will request residential permit parking on the prescribed area,
21 et cetera, and I guess that's encompassing the whole proposal.

22 MR. WATSON: I don't think we can, but we can't request
23 residential permit parking. We will request the parking restriction on Ordway Street
24 to 15 minutes.

25 MR. FRANKLIN: 15 minute parking.

26 MS. KING: Mr. Franklin, going back to you, can I just suggest
27 that rather than specifying double and triple parking, we just say illegal parking
28 because blocking driveways and --

29 MR. FRANKLIN: Sure.

1 MS. KING: -- and illegal parking on the sidewalk, you know, let's
2 just say illegal parking.

3 CHAIRPERSON REID: And Ms. Rose, could we also say, will
4 this be too vague to say an acceptable plan?

5 MS. ROSE: Acceptable by? You have to say whom, to the
6 neighbors?

7 CHAIRPERSON REID: Yes, acceptable to the neighbors or to
8 the community. Would that be too vague, or would that satisfy what you were
9 referring to earlier?

10 MS. ROSE: Yes. Who would enforce it? Well, the neighbors
11 will decide what's acceptable, but if they don't come up with an acceptable plan,
12 then what?

13 CHAIRPERSON REID: Well, Mr. Watson said it's -- any
14 conditions well conditions that we impose, well, I guess they would have the
15 enforcement ability with the DCRA.

16 MS. ROSE: Will the DCRA be able to say well you didn't come
17 up with an acceptable plan. Therefore, we're going to fine you or whatever?

18 MS. BAILEY: Perhaps it should just say as Mr. Franklin
19 indicated a plan, there shall be a plan, and leave the word acceptable out.

20 CHAIRPERSON REID: I think we're talking about the
21 enforcement issue. That was the problem, enforcement.

22 MR. WATSON: I would assume, though, that the neighbors or
23 the ANC could go to the DCRA and say that there's a plan complying with the
24 requirement of the BZA.

25 MS. ROSE: And the whole thing right here is backwards. The
26 plan that complies with the BZA is supposed to come to BZA before today, and BZA
27 is supposed to look at it and either grant it or not grant it.

28 But to approve what's before the Board and say submit a plan
29 later, and we hope it's acceptable to the neighbors, I just never, and that's why I'm

1 having trouble. I've just never had a process like that before.

2 CHAIRPERSON REID: In other words, unless we get a plan
3 today where the neighbors and the ANC agree on various issues and it's signed by
4 both entities, then we would have to defer this particular -- making a decision on this
5 particular case until our next meeting. And in the interim, we would then receive the
6 plan that had the correct language and with the signatures affixed thereto.

7 MS. ROSE: Which is how the Board always does it.

8 MR. WATSON: If I can say, I think the difference in this case is
9 this is a situation of a long-established operation. This is not the normal situation
10 that comes to the Board of establishment of a child development center.

11 CHAIRPERSON REID: That would be all right, Mr. Watson,
12 except for the fact that we do have what we call friendly opposition where there are
13 some concerns that have been put before us today, notwithstanding the fact that this
14 is an institution that has been in business for quite some time.

15 MR. WATSON: Well, although we are willing to agreeing to
16 doing a plan, we're perfectly happy to go ahead. We don't concede that there is an
17 adverse impact, nor do I believe an adverse impact has been shown.

18 There are two times a day indicated of picking students up that
19 extend for a period of 15 to 20 minutes when there is an impact on the street by an
20 institution that was there when every single person moved into their property. But
21 we are willing to agree our difficulty has been, and this has been delayed, and it is
22 unfortunate because of the notice problem that we appeared for a hearing in
23 January, and there was a decision made.

24 And now it is April, and if we go further, we do have concern as
25 to the compliance issue on our child care license because the child care authorities
26 seem to be losing patience and have actually issued a license with the lower number
27 saying that it can be increased when the approval of the certificate is. But if we
28 continue, we're in technical noncompliance.

29 CHAIRPERSON REID: Ms. Rose, could this be set for the next

1 hearing date, the next meeting date which is next week?

2 MS. ROSE: It could be set for May 6 --

3 CHAIRPERSON REID: May 6?

4 MS. ROSE: -- depending on how much time. I mean I can give
5 you the dates that I have for due dates, and I don't know if that's adequate time for
6 the Applicant to meet with the ANC and the neighbors, but I can let you know what
7 those dates are.

8 CHAIRPERSON REID: Beverly, did I hear you say that in the
9 interim that while it's pending before the Board, there will be no sanction, there was
10 no violation or any penalties that would be --

11 MS. BAILEY: The Applicant has said that there has been no
12 penalties he'd paid at this time. In addition to that, I would imagine if they give the
13 Board Staff, DCRA give the Board Staff a call, he certainly can tell them that this
14 project is in the pipeline and a decision is pending soon.

15 So hopefully, they would put a hold on this and not issue any
16 citations until this matter is resolved. This project has been in a time line -- the
17 pipeline now for a number of months, and I can't imagine another couple of weeks is
18 really going to make that much difference.

19 CHAIRPERSON REID: That being the case, Mr. Watson, I think
20 that the consensus of the Board is, Mr. Franklin, I think we need your support of the
21 May 6th meeting to make sure you're here.

22 MR. FRANKLIN: Does that give you enough time, May 6th?

23 MR. WATSON: Well, we will certainly work to that time because
24 we are the ones, we do want this issued as quickly as possible.

25 CHAIRPERSON REID: Will that give you, as Mr. Franklin said,
26 allow you the time to meet with the ANC, or does the full body of the ANC have to
27 meet? We have to consider that in order to for you to get together to --

28 MR. WATSON: I'm not sure whether the ANC -- the ANC was
29 talking about --

1 CHAIRPERSON REID: -- get together to come up with an
2 agreement?

3 MR. WATSON: -- was talking reasonably so of meeting with the
4 neighborhood.

5 CHAIRPERSON REID: Could you speak to that matter?

6 MS. ROSE: And before he does, let me let you know what the
7 dates would be. You would be looking to get submissions?

8 CHAIRPERSON REID: Well, we would like to get the agreement
9 in --

10 MS. ROSE: Okay.

11 CHAIRPERSON REID: -- and ample time for the ANC to have
12 met, if they need to meet, to vote on the agreement and your procedures, and then
13 allow us to get to the next possible date for us to make the decision.

14 MS. ROSE: We would be talking, what, four and a half weeks?
15 It's awful tight.

16 MS. STAFFORD: Exactly.

17 MS. ROSE: I wanted to get some feedback from you.

18 MR. MENDELSON: Phil Mendelson with the ANC. The ANC-3C
19 meets on April 27, Monday, April 27.

20 CHAIRPERSON REID: Will that give you ample time to have the
21 meeting --

22 MR. MENDELSON: We can certainly try.

23 CHAIRPERSON REID: -- and to come to an agreement, and
24 have it submitted to us?

25 MR. MENDELSON: We can certainly try. I think there would be,
26 obviously, there would be some back and forth, and it's important to us that the
27 school work with the neighbors. They're the ones who are going to feel this most
28 directly.

29 And assuming that things can be worked out between the school

1 and the neighbors with the ANC sort of participating, we can take it up on the 27th,
2 our ANC. But that means we would not file with you until, I think you said May 6th is
3 when you meet?

4 MS. ROSE: May 6th is the date of the meeting, but the
5 documents would need to be -- this is the situation. The documents need to be in in
6 time for us to submit them to the Board. If the Board is willing to get them on the
7 6th, that's fine with us.

8 But there's a ten-day period of response time which includes
9 mail. Some people do it in seven, but if they mail it, they have ten days. So I was
10 backing it up. The submission would be due by I have the 17th and the 27th, but I
11 didn't know that there was a need for a meeting here. So I don't think that those
12 dates would work.

13 MR. MENDELSON: Well, I think we're talking about a process.
14 It would probably be some sort of a joint submission.

15 MS. ROSE: Okay.

16 MR. MENDELSON: In other words, there would not be a
17 response, or if things were to completely break down, I can say now that the ANC
18 would waive the ten-day requirement. We would simply respond after we meet on
19 the 27th.

20 MS. ROSE: Is that waiver also applicable to the Applicant, or
21 would you be willing to waive the ten-day response time for a shorter period?

22 MR. WATSON: Well, I think that was, Mr. Mendelson indicates
23 sort of automatically works out. The only thing that would be submitted is an
24 agreement. If there's an agreement, by its very nature, neither side is opposing it.
25 So I don't think there's anything to respond to --

26 MS. ROSE: Okay.

27 MR. WATSON: -- at that point. So yes, and if the Board will
28 waive its rules as to submission to it because it is approved the 27th, it can't be there
29 many days before the Board.

1 MS. ROSE: Do you have a problem coming in on the 10th, on
2 the date? Do you have a problem coming in on the day of the 6th?

3 MS. KING: No. I mean we can always take a few minutes and
4 read it on the dice.

5 CHAIRPERSON REID: Ms. Rose?

6 MS. ROSE: Yes.

7 CHAIRPERSON REID: That wouldn't be a problem for the
8 Board. Mr. Franklin, would that be acceptable to you on that date?

9 MR. FRANKLIN: That's fine. I can't -- I just don't have my
10 schedule. So I don't know if I'll be here May 6th, but I can certainly look at the
11 material. Let's get some clarity in terms of what you're going to be doing in the
12 absence of any Order of this Board.

13 Is the operative instrument now the draft of the conditions that
14 the ANC has provided? Is that going to be the constitution for what you're going to
15 do between now and the next meeting with the Board?

16 MR. WATSON: I am expecting -- no, I have to say that what
17 going to -- assuming there is an agreement as to the parking restriction, the only
18 thing that will be agreed to is it will be requested from Department of Public Works.
19 We can't fine Department of Public Works.

20 MR. FRANKLIN: Mr. Mendelson, why do we have to have both
21 the neighbors and the ANC as part of this process? Doesn't the ANC represent the
22 neighbors?

23 MR. MENDELSON: The --

24 MR. FRANKLIN: Why don't we just say they'll meet with the
25 ANC, and the ANC will do its normal good touching of bases.

26 MR. MENDELSON: Well, our ANC meetings are a little bit like
27 the Board's meetings. We have a lot of agenda items, and we have -- no, they're
28 like -- they're similar. We have a lot of items. We spend a long time on the different
29 items. What we encourage applicants to do, we went through this recently with

1 Luray School, is for the school to work with the neighbors.

2 They're the ones that are most directly involved. And we
3 participate, but if it were to be formally us and not including, formally including the
4 neighbors, the ANC would just turn around and say to the school you still have to
5 meet with the neighbors.

6 MR. WATSON: Well, if I can say though with regard, the
7 problem including neighbors, and we're not averse to the neighbors being involved
8 in it, but there's no way to reach an agreement with the neighbors.

9 There are potentially hundreds of the neighbors, and there's no
10 way we can have a vote on that. I assume what we're talking about is whatever is
11 reached between the neighbors and the school will then be ratified by the ANC, and
12 what the Board will received is the ANC's ratification of that because otherwise, I
13 don't know what a quorum of neighbors is.

14 MR. MENDELSON: I am looking at the language that was in our
15 resolution. Our thinking was that somebody was going to have to draft a plan, and I
16 am going to try to put that responsibility on you, Mr. Watson, and I would hope that it
17 would be submitted to the neighbors who are here today and the ANC, and there
18 would be comments.

19 Sure, in terms of a -- a vote, the ANC is the one who is going to
20 vote, and it would be hard to come up with a quorum of neighbors. So in that sense,
21 yes, the process, I guess, does come to a climax through the ANC and is submitted
22 to the Board.

23 MS. ROSE: Is it possible to get a due date before the 6th even if
24 it's the 1st of May, the 4th of May, 5th of May, the 30th?

25 MR. MENDELSON: To get an update?

26 MS. ROSE: We can get it to the Board before the 6th the
27 document that they're submitting, the agreement.

28 MS. KING: You're meeting on the 27th of April?

29 MR. MENDELSON: Our scheduled meeting is the 27th.

1 MS. KING: And our next scheduled -- our scheduled meeting
2 that we're talking about is the 6th of May?

3 MS. ROSE: Yes.

4 MR. MENDELSON: Assuming that we have an agreement by
5 the 27th, we would probably submit -- we would try to submit by Wednesday or
6 Thursday of that week, which should be, I believe, the deadline for your packet. If
7 we're close, but we don't have the final agreement, then we would probably try to
8 figure out a way that we can come up with it before the 6th.

9 MS. ROSE: Our packages go out on the 1st.

10 MS. BAILEY: Madam Chair, if the community cannot come to an
11 agreement, the Board has the option of stipulating what the conditions are for that
12 Order if the community is unable to come up with an agreement.

13 CHAIRPERSON REID: Sure.

14 MR. FRANKLIN: Yes, that's a good point.

15 CHAIRPERSON REID: So basically, hopefully you will be able
16 to come up with an agreement that all sides can agree upon that is of your own
17 making and that you're all amenable to.

18 But in the absence of such then we would, of course, have to do
19 it, and we would prefer not to and allow you the opportunity to be able to make your
20 own agreement based upon your own terms being that you are the two that are most
21 involved.

22 MR. WATSON: Is it then that we are rescheduled for the 6th, we
23 expect an agreement. In the absence of an agreement, we'll be rescheduling
24 without an agreement. I don't expect that.

25 CHAIRPERSON REID: I'm sorry. What's the last thing you
26 said?

27 MR. WATSON: I said I don't expect the prospect of not reaching
28 an agreement.

29 CHAIRPERSON REID: Okay. Very good.

1 MR. FRANKLIN: I'm assuming that your expectations are
2 confirmed, there would be no time limit on the special exception.

3 MR. WATSON: Thank you.

4 CHAIRPERSON REID: Thank you.

5 MS. ROSE: Then the record and the application is closed
6 except for the agreement, if there is one, to be reached between the Applicant and
7 the Advisory Neighborhood Commission which will be due on April 30th, by close of
8 business April 30th. That is a Thursday.

9 MR. MENDELSON: Okay.

10 MS. ROSE: And the Board will consider a decision on the
11 application on May 6th. The meeting this time will be at 1:00 as opposed to 9:30,
12 1:00 in the afternoon, May 6th.

13 CHAIRPERSON REID: At this time, we'll take a two minute
14 recess. We'll resume in approximately two or three minutes.

15 (Whereupon, the foregoing matter went off the record at 2:48
16 p.m. and went back on the record at 2:52 p.m.)

17 CHAIRPERSON REID: We will now come back to order. Thank
18 you. Ms. Rose, please call the next case.

19 MS. ROSE: The next case is 16328 of Hugh V. Kelly pursuant to
20 11 DCMR 3108.1, for a special exception under Section 213 to establish an
21 accessory parking lot in the residential portion of a site in a C-1/R-5-A District at
22 premises 3922 12th Street, N.E. (Square 3887, Lot 5).

23 Would all persons planning to testify in this application please
24 rise to take the oath? Raise your right hand. Do you swear or affirm that the
25 testimony you're about to give will be the truth, the whole truth, and nothing but the
26 truth?

27 (Chorus of yes.)

28 MS. ROSE: You may be seated.

29 CHAIRPERSON REID: There are no parties that have signed

1 up this case, so we will proceed. Now, are there any persons here in opposition to
2 this particular application? Opposition? Okay. Thank you.

3 MR. SMITH: Good afternoon, Madam Chairperson and
4 Members of the Board. I'm Adam Smith of the law firm of Arter & Hadden appearing
5 this afternoon as Counsel to the Applicant, Hugh V. Kelly, owner of Kelly's Ellis
6 Island Restaurant and Pub.

7 This application seeks special exception to use the residentially
8 zoned portion of the Applicant's property for restaurant parking at 3922 12th Street,
9 N.E., Lot 5, Square 3887. The authority for the Board to approve the special
10 exception is pursuant to Sections 213, 352 and 3108.1 of the Zoning Regulations.

11 The facts of this case are quite simple. Mr. Kelly purchased
12 property that had been used as a parking lot by its prior owner. At that time, the
13 Board had granted a special exception to the previous owner allowing the entire
14 property, including the residentially zoned portion, to be used for off-street parking in
15 1973.

16 The prior owner had used this lot to provide accessory parking
17 for the neighboring retail facility that Mr. Kelly also bought and now runs as a
18 restaurant. This special exception lapsed in 1979. When Mr. Kelly purchased the
19 property and sought to use it as a parking lot, the District Government required him
20 to install concrete barricades along the C-1/R-5-A zoning boundary to prevent cars
21 from parking on the residentially zoned portion of the parking lot.

22 This special exception will merely allow Mr. Kelly to remove
23 those barriers from the middle of his lot so that the entire lot can again be used for
24 parking for customers of the restaurant. The use, structure, and operation of the
25 property have not changed since the Board's action in 1973. The only thing that has
26 changed is ownership of the property.

27 Our purpose today is to further supplement the case already in
28 the record with testimony from the Applicant, Hugh Kelly. We note that an ANC
29 Report, a letter from the Single Member District Commissioner, a letter from a

1 nearby property owner, and a letter of support from Council Member Harry Thomas,
2 Sr. are also in the record. Mr. Kelly?

3 CHAIRPERSON REID: Are you suggesting -- is the area in the
4 R-5-A zone presently being used for parking? Is that what you're saying?

5 MR. SMITH: No, it is not.

6 CHAIRPERSON REID: Well then, is -- okay, because it seems
7 to me that you're, at least I was confused. You said this simply allowed him to
8 remove barriers so that the entire lot could be used for parking, and the inference
9 being that it was presently being used for parking. It is not.

10 MR. SMITH: It is not.

11 CHAIRPERSON REID: What is its present use?

12 MR. SMITH: It is not being used. It's vacant.

13 CHAIRPERSON REID: Okay.

14 MR. SMITH: One-half of the lot -- the entire lot is configured as
15 a parking lot, but the District Government has caused concrete barriers to cut the lot
16 basically in half. The C-1 portion is being used as a parking lot. The R-5-A portion
17 is not being used for anything.

18 CHAIRPERSON REID: Thank you. But the R-5-A portion is
19 paved, and striped, and --

20 MR. SMITH: It is, right.

21 CHAIRPERSON REID: Okay. Thank you.

22 MR. KELLY: Madam Chairperson and Members of the Board, I
23 am Hugh V. Kelly, the owner of Kelly's Ellis Island. I have a quick statement. I'm
24 kind of trying to keep my thoughts in one place because I don't often speak through
25 a microphone. I'll make it about two or three minutes if that's okay.

26 CHAIRPERSON REID: That's fine.

27 MR. KELLY: Thank you. I am the owner of Kelly's Ellis Island
28 Restaurant and Pub located at 3908 12th Street, N.E. My home address is 111
29 Virginia Avenue, Edgewater, Maryland. Prior to moving to Maryland one year ago, I

1 was a District resident for 26 years.

2 I'm here today to urge the Board to approve the application for a
3 special exception that authorizes my restaurant to use a residentially -- the
4 residentially zoned part off it's existing lot to provide off-street parking for my
5 customers.

6 I've been a member of the D.C. business community close to 30
7 years and opened Kelly's Ellis Island nearly two years ago. I'm a hands-on owner,
8 come into the restaurant daily, direct all aspects of the operation including care and
9 maintenance of the restaurant parking lot.

10 As you can see from the photographs in the record, this
11 application must have the resident part of our parking lot. The law has split Zone C-
12 1 to adapt -- I'll skip down because Mr. Smith just covered the facts of the parking lot
13 is split into two sections, C-1 being the front part where we've got an occupancy
14 permit to occupy it.

15 We were forced to put up these New Jersey barriers to block the
16 rear part of the lot. Meanwhile for the last six years which I've owned the property
17 -- in which I've owned the property, I've paid taxes to the D.C. Government for the
18 whole thing as a parking lot.

19 So I'm here today to address this fairly inadequate situation. I
20 pay a mortgage on the lot also. But the real reason I need the parking lot is for my
21 customers. I don't want to impinge too much on the neighborhood. I think the
22 people, the overriding assent of the neighborhood is that we be able to park most of
23 our customers on our own property.

24 So the ANC required me, as a condition of giving me my ABC
25 license, to find parking space. And the submission there you'll see them signed by
26 the residents of the neighborhood and the Commission. The usual safety is
27 important, too, at night. As a going business with about 35 employees, we have to
28 do dinner business.

29 After dark, it's difficult for people to walk a distance and feel safe.

1 My dinner business is suffering. My business has not made a profit yet in the first 20
2 months of operation, and I feel that getting access to this parking will give people a
3 closer drive right to the door of the restaurant and make it profitable for me and the
4 community in which I reside. Thank you.

5 CHAIRPERSON REID: Thank you. Board Members, any cross
6 exam? No further questions. No -- are these people parties? Are they opposition
7 or are they parties? We have no Government reports. So the next would be the
8 report from the ANC. Is there an ANC representative here today?

9 There's a letter from the ANC and in support of the application.
10 There was ANC 5-A, and it stated that there was a quorum present, and seven
11 Commissioners present. As a matter of fact, in their submission, I will read into the
12 record, it states, in part, that "Mr. Kelly and his restaurant, Ellis Restaurant, has
13 quickly proven itself to be very beneficial to the community.

14 He has offered assistance and public outreach to the
15 neighborhood causes, offered employment for the community, and in which provide
16 services and tax revenues for the city. The District very much needs such
17 businesses and should certainly do all it can to help those already here."

18 And as such, we will give the ANC the great weight to which it is
19 entitled. I now move to persons in support of the application. Are there any other
20 persons here in this Court? All right. Persons in opposition of the application. All
21 right. Please allow them to come forward.

22 And I should indicate that we did have a letter of support from
23 Council Member Harry Thomas, and another letter from Antonia Magdelina in
24 support. Okay. Now, opposition.

25 MS. PEACHES: Good afternoon, Madam Chair and Members of
26 the Board. For the record, my name is Sandra Peaches. I reside 4501 Venton
27 Place, Lanham, Maryland, and I'm the wife of the owner of the property, Mr. Creecy.

28 I will defer to him at this time. He will give you a brief historical
29 perspective in terms of why we are in opposition of this application. And please

1 excuse my voice. I'm recovering from bronchitis.

2 CHAIRPERSON REID: Okay. Let me understand. You are the
3 wife of?

4 MS. PEACHES: The owner of the adjoining property.

5 CHAIRPERSON REID: Okay. One second. Are you all familiar
6 with the party status, being granted party status here at Court?

7 MS. PEACHES: Our -- the letter we got informing us of this
8 hearing did not give us fully the information regarding the party status, but we would
9 request that you waive the time limit for filing and give us party status at this point.

10 CHAIRPERSON REID: Okay. Because you are an adjoining
11 property, so obviously, you would be affected by the -- whatever status we give this
12 particular Applicant whether to approve or not to approve. So you can be, if there's
13 no objection from the other Board Members, I have no problem granting you party
14 status.

15 MS. KING: No, I concur.

16 MS. PEACHES: Thank you. And also, we've submitted, for your
17 information, a brief written statement. We won't go through the whole thing, but we'll
18 summarize points from that.

19 CHAIRPERSON REID: Thank you.

20 (Laughter.)

21 CHAIRPERSON REID: You know, if you can just hit the salient
22 points of it, we'll appreciate that.

23 MS. PEACHES: Thank you.

24 MR. CREECY: To the Board, I am Rodney Creecy, owner of the
25 house known as 1123 Michigan Avenue, N.E., Square 3887, Lot 18. It's on the east
26 side of the parking lot. My property has been severely impacted due to the parking
27 lot's existence, which was conditionally granted exception based on the raising of a
28 residence back in 1973.

29 I acquired my property in 1978, and have observed conditions on

1 the lot during the historical period, at least the last 20 years. And I'm concerned that
2 the lot not revert to any of the previous conditions which were all in violation of the
3 Opinion issued by the Zoning Board at that point in time.

4 The first issue that I want to address is the fact that there was
5 never a review during the five years, the length of time that was granted for this
6 special exception in the first place. And I've had to come, in fact, to some zoning
7 people in the District Government and move to try to do something with the parking
8 lot on several occasions. So I have a historical concern over this.

9 And the fact that I got a letter means I should be a party of
10 record. At any rate, I think that the lot needs to be weatherized. It has had erosion,
11 constant erosion into the public space on Michigan Avenue. I've been given to have
12 to remove trash from my property due to the parking lot eroding onto my property
13 adjacent to it.

14 The eight inch coping that was specified to be installed was
15 never installed on the Michigan Avenue side. There's concrete coping on the 12th
16 Street business side, but nothing to protect the residents' side. The bumper stops
17 and striping were never installed and maintained consistently, and presently, there is
18 no paint striping as was stated previously by the Counsel.

19 And we should be given to understand why the District moved in
20 to put the highway barricades into the space in the first place to protect the
21 residents' area. That's due to my efforts of talking to them, and I've been told that
22 there's some other problems that occurred with Mr. Kelly in the zoning office.

23 At any rate, the attorney also, Mr. Adams, omitted that there was
24 a public space on the Michigan Avenue side, and I have some photographs to
25 witness to that fact. The, what's it, Attachment Number 1 or Exhibit 1, I'm sorry,
26 Number 2. Exhibit 1 is the Opinion from the Board, the original record.

27 And in fact, each of the items that I'm going over now address
28 the Opinion elements which were labeled A through H. So that's my reference in
29 back of the items that I have listed, and so you can follow them if you like.

1 At any rate, referring to the first exhibit, I'm sorry, the one I'm
2 referring to is Number 2. You'll see a public sign, and that's my house in the
3 backdrop there. And that sign was removed, and an eight foot commercial fence
4 was, in fact, installed in a residential zone.

5 CHAIRPERSON REID: Excuse me. I'm not following where you
6 are with these pictures.

7 MR. CREECY: Here. This colored picture with the colored sign.

8 CHAIRPERSON REID: But which one?

9 MR. CREECY: There's something called Exhibit 2. That's this
10 page. It's behind your -- the findings and zone permit record that I included with
11 there.

12 CHAIRPERSON REID: Okay. And does it say Exhibit 2?

13 MR. CREECY: Yes, it does. Right at the top of the page.

14 CHAIRPERSON REID: Where?

15 MR. CREECY: It says Number 2, and then there's one page and
16 summary that lists all the exhibits at the beginning of this.

17 CHAIRPERSON REID: That's your house?

18 MR. CREECY: Yes, in the backdrop, exactly, on the east side of
19 that parking lot. Okay. And I want you to observe the public sign, which was
20 removed when the fence was installed, the commercial fence. So prior to the
21 Millers' who were not described adequately, they own Michigan Liquors, and this
22 parking lot was a pertinent to -- sensory parking to Michigan Liquors historically from
23 its inception. Okay.

24 This gentleman who's making application now, Mr. Kelly, owns a
25 pub and has some designs, as I've been told, of acquiring other properties. And the
26 nature of that business is similar. The whole 12th Street corridor has too many
27 liquor licenses. There are at least a dozen liquor licenses between Michigan
28 Avenue and Rhode Island Avenue.

29 And the story that I'm going to try to tell you about here has to do

1 with the problems that have incurred because of all of the traffic across this parking
2 lot. Okay. So let's say it's established anyway, by my recollection, and this sign that
3 there was public space on this parking lot at its frontage.

4 And my wife is telling me that there was also a parking sign there
5 as well. Okay. So that's what I am referring to when I say public space in the rest of
6 my discussion. I mention the fact that there was the eight-foot fence installed
7 abutting the sidewalk of the residential zone sign, which is in direct violation of the
8 zoning requirements.

9 The landscape of the lot has always been kept in poor condition
10 featuring poisonous weeds that I have had to control from my vantage point with
11 defoliants, and I have always historically had problems with drunks, and drug
12 dealers, and users, and kids, automobiles, what have you leaving behind trash and
13 residue across this lot as well as what flows onto my property.

14 I have Exhibit 3, which is another picture that shows you the type
15 of overgrowth that occurs there, and there hasn't been anything to change this
16 overgrowth from occurring at the present. This is still -- this is the present condition
17 of the lot. Okay. The drinkers discard bottles, and bags, and cups, the usual thing.
18 The drug paraphernalia is there, and I've included a letter just so you won't say it's
19 just me crying the blues here.

20 This is a letter that was written in the Post, and I have at least
21 three or four of these types of articles that describe the melee that occurs there in
22 that area. There's a lady, Ms. Cheryl Welsh Shirer has described finding a drug
23 needle on the street in close proximity with the lot and said that she had problems
24 with trying to remove it.

25 And she called the police, and they said they couldn't do
26 anything. The gist of the article is that it is left to somebody to sweep it up and clean
27 it up, and the police would have nothing to do with it. I was the person that had to
28 do all that clean-up behind this type of trash. Okay. And it was all really centered
29 around this parking lot situation.

1 This lot, after the Millers decided to retire from their liquor
2 business, they leased their liquor license to someone else. They tried to lease the
3 parking lot as well. And prior tenant to Mr. Kelly's owning the lot was an auto
4 salvage parts house or whatever. And they had, in fact, erected some kind of
5 resident structure on there in direct violation of the zoning requirements.

6 There was a lot of traffic of people going in there trying to steal
7 auto parts and what have you, and it became a very great burden on my property.
8 Again, I complained to the Government. Subsequently, the property was sold. I've
9 included -- what is it? Exhibit 5.

10 Exhibit 5 shows the use of the parking lot, again, erected --
11 located behind an erected barrier using some vertically mounted telephone posts
12 and chain link. That was the original character of this lot as it was approved by the
13 prior Board. And what I'm asking is that at the least it be restored with the public
14 space in mind on the Michigan Avenue side.

15 And you can see the character of the commercial fence that
16 continues around to the front. This picture, in fact, predates the installation of the
17 fence on the Michigan Avenue side. It was only partially commercially fenced in the
18 prior use, and at present, it is fully enclosed in a commercial fence with the traffic
19 barricade that was installed by the D.C. Government to separate the two zones.

20 The commercial lighting has been dysfunctional for years, and
21 when it is in use, it would shine into the houses on either side because it's mounted
22 in a vertical plane. Horizontal plane lighting would probably be the proper
23 recommendation for the lighting fixtures to be installed. They're over 20 years old.
24 They have to be replaced just to make them functional, I'm sure.

25 In summary, all the conditions listed by the Zoning Administration
26 Board have been flagrantly violated over 25 years. I have suffered undue hardship
27 because of the large volume of foot traffic, cars, loitering, trash, and business
28 attracted to the parking lot by the Michigan Liquors, cleaners, store front, church,
29 shoe shop, real estate office, bar and restaurant, hair stylist, and an auto salvage

1 company, and Brookland Elementary School as well as visitors to Turkey Thicket
2 Park, which is across the street.

3 It's a great attraction. It has a basketball court. In fact, I believe,
4 was it three or half a dozen basketball courts in tandem and tennis. So it draws a lot
5 of foot traffic all the time. And this parking lot is an attraction for those people to
6 congregate, and I would like to see it under some kind of positive control.

7 I applaud Mr. Kelly. He has, in fact, locked the lot down, and it
8 has made the character of the neighborhood change. So you know, the attorney
9 wasn't even serving his purpose really. He has, in fact, changed the character, and I
10 would like to keep it that way as much as possible with whatever resolution we come
11 up with today.

12 The terms that I must request as a minimum basis for the
13 conditional approval of this exception are listed, and my wife is going to go over
14 those terms. And if you have any questions about the historical basis of what I'm
15 describing here, I would like you to direct it to me now.

16 But one more thing I want to emphasize is that this public space
17 use, I know from my own information and the pictures I'm presenting to you here,
18 has been in place for over 20 years. It was there, in fact, when I moved to this
19 location. So they have, in fact, enclosed public space with their fence.

20 CHAIRPERSON REID: Okay. It sounds to me like rather than
21 being in opposition to, you are in support of with conditions. Is that correct?

22 MR. CREECY: I would say some severe conditions. I think we
23 need to go over those.

24 CHAIRPERSON REID: Yes.

25 MR. CREECY: I have met with Mr. Kelly's attorney. I wanted to
26 meet with him personally. I wish we could have worked this out before we got here.
27 I would not have gone through a diatribe rather than to say that we've agreed to
28 some terms. I'm very flexible.

29 CHAIRPERSON REID: Are you saying that --

1 MS. PEACHES: We're reasonable, Ms. Reid. We understand
2 the business character of the neighborhood, but we also ask for the quiet enjoyment
3 of the other residents and the tenants who are
4 there --

5 CHAIRPERSON REID: Certainly.

6 MS. PEACHES: -- some conditions, at least to stop the foot
7 traffic and the automobile traffic that once traveled freely through that lot.

8 CHAIRPERSON REID: You said you did meet with the attorney.
9 And what came as a result of that meeting?

10 MS. PEACHES: They decided to proceed.

11 CHAIRPERSON REID: So you're saying that you did not get a
12 resolution to the problems that
13 you --

14 MR. CREECY: Well, he told me that he wasn't in a position to
15 negotiate. He was listening, wanting to get my side, and I showed him some
16 documentation, and we never got back together. I had a death in the family, so I
17 was gone for the last week.

18 CHAIRPERSON REID: I see. And a lot of the issues that you
19 raised today, sir, appear to have then from the previous --

20 MR. CREECY: It's a long history of events.

21 CHAIRPERSON REID: All right.

22 MR. CREECY: And I'm saying that there's some things that if
23 they're not forthcoming about, you know, I would not say to ignorance, okay, but
24 there's some information that I'm putting forth here which is not in the record except
25 for what I'm giving you.

26 CHAIRPERSON REID: Sure. You want --

27 MS. PEACHES: A majority of the adverse conditions still exist.
28 The one thing that has been comforting was when the barricades were put up
29 across the lot. That stopped the 24-hour a day traffic from going through the lot,

1 automobile as well as foot traffic which substantially reduced the noise coming from
2 the lot, and also the confusions.

3 You know, we've been present where we've had to ask loiterers
4 to leave from the lot, ask people to stop fighting. I've observed drug use on the lot,
5 drinking that not only resonates from the adjacent building, but from all of the -- it
6 looks like it was a gathering area for all of the businesses on the 12th Street
7 corridor.

8 CHAIRPERSON REID: Not to cut you off. Are you finished?

9 MS. PEACHES: Go ahead. My voice is about finished.

10 CHAIRPERSON REID: I just wanted too add when you had to
11 basically monitor or to ask the people to leave the lot or to clean the lot, was this
12 with the previous owners, or was this after it had been acquired by Mr. Kelly?

13 MR. CREECY: If you give me some dates as to when he
14 acquired the property.

15 CHAIRPERSON REID: Oh, you don't know.

16 MS. KING: Did you say a year ago, Mr. Kelly?

17 MR. KELLY: No, I said --

18 CHAIRPERSON REID: You need to come up. You can't speak
19 from the audience please.

20 MR. KELLY: We acquired the lot about 1992, the same time that
21 I bought the property for the restaurant.

22 CHAIRPERSON REID: All right.

23 MR. KELLY: Or actually a bit after. We got the property for the
24 restaurant. Then the ANC made me go out looking for parking. And then I solicited
25 -- the Miller's owned this liquor store, and I was able to convince them to sell the lot
26 to me because at that time, there were about 30 or 40 abandoned cars and trucks
27 on it, and --

28 MR. CREECY: Auto salvage.

29 MR. KELLY: Auto salvage thing. And I, at my expense, moved

1 all that stuff out and replaced all the lighting. The bulbs all needed to be replaced,
2 and of course, the barrier was made -- was made functional because the zoning
3 made me put up a particular Jersey barrier, removable tanks.

4 MR. FRANKLIN: Mr. Kelly, while you're up, is there anything
5 that's being suggested here by way of additional conditions that you find
6 objectionable?

7 MR. KELLY: I am in total sympathy with the Creecys as a 26-
8 year long member as a resident of the District of Columbia, now just moved. I am
9 horrified at what's going on around our neighborhood, the dealers and all the things
10 he's referred to. I have done my work, I think. The Commissioners have signed off
11 on it, the ANC, because I've done the police work, and I've brought in the police --

12 MR. FRANKLIN: Let me be very specific.

13 MR. KELLY: Okay.

14 MR. FRANKLIN: Mr. Creecy and his wife are asking that the
15 conditions to be imposed on this be the same as were imposed in 1973, but they
16 have added a couple that were not imposed in 1973. One was to maintain a chain
17 link barrier with a gate to control access at all times. Do you find that objectionable?

18 MR. KELLY: Might I put it another way, Mr. Franklin. That eight
19 inch chain link fence Mr. Creecy refers to was there long before I moved in there.
20 And I understand it was put in there under what was priorly zoned as parking. Then
21 it would have been legally put in there. But now, it's probably illegal because the
22 zoning expired.

23 MR. FRANKLIN: Well, if you can answer my question. Do you
24 have any objection to maintaining a chain link barrier and a gate to control access at
25 all times?

26 MR. KELLY: I have no problem with that except that I need to
27 have it open during business hours so people can get in and out.

28 MR. FRANKLIN: I understand. I assume that there would be an
29 automatic gate that would rise when a car approached, and then had a certain hour -

1 -

2 MR. KELLY: No.

3 MR. FRANKLIN: -- where the gate would not rise if you were not
4 open for business.

5 MR. KELLY: No. I would close it at the end of business, and
6 open it in the morning for business.

7 MR. FRANKLIN: Right.

8 MR. KELLY: And light the property during business which I
9 already have done.

10 MR. FRANKLIN: Okay.

11 CHAIRPERSON REID: Excuse me, Mr. Franklin, you have to
12 bring him back because this questioning, I'm told that they will omit this.

13 MR. FRANKLIN: Well, I'm just trying to get to the core of this --

14 CHAIRPERSON REID: Yes. Well, we have to kind of do it in
15 procedure.

16 MR. FRANKLIN: -- without having to go through a repeat of
17 everything that we have in writing.

18 CHAIRPERSON REID: We have to bring them back up, okay?
19 And Mr. --

20 MR. KELLY: I'm willing to comply with all the conditions that the
21 zoning would require.

22 CHAIRPERSON REID: All right. Thank you. Thank you. Ms.
23 King, you have a question?

24 MS. KING: No. I'm confused about this public space, and I don't
25 --

26 CHAIRPERSON REID: If you can have a seat. We'll bring you
27 back up as soon as we get through with the Creecys.

28 MS. KING: You're referring to a public space on Michigan
29 Avenue that has somehow been usurped by -- can you show me on this map where

1 this public space was on this plat?

2 MR. CREECY: Yes. It begins at my driveway, which is on the
3 east side --

4 MS. KING: Well, I don't know where your driveway is.

5 MR. CREECY: -- near the fence post for the next lot.

6 MS. KING: I don't know where your driveway is or where your
7 house is.

8 MR. CREECY: Right here. I'm sorry. Okay. Well, this is my
9 plat. Actually, you can place these two nextdoor to each other. This is the fence
10 adjoining my property, which is --

11 MS. KING: So your property is here?

12 MR. CREECY: Yes.

13 MS. KING: Now, --

14 MR. CREECY: And that fence post, okay, is the beginning of
15 where that eight-foot fence on Michigan Avenue --

16 CHAIRPERSON REID: Excuse me, Mr. Creecy. Would you
17 repeat that into the mike, so we'll have it for the record?

18 COURT REPORTER: I heard. I picked that up.

19 CHAIRPERSON REID: Oh, you did?

20 MS. KING: There's a mike there. So where is this public space?

21 MR. CREECY: The public space was a set back. It's a car
22 length set back across the frontage, and that was essentially in front of these, what
23 do you call them? Telephone poles.

24 MS. KING: You mean these telephone poles are along Michigan
25 Avenue?

26 MR. CREECY: No, they're set back. They're set back.

27 MS. KING: How far?

28 MR. CREECY: A car width. In other words, it was a parking
29 space on either side of the entrance to the parking lot. It was gapped in the center,

1 and there was --

2 MS. KING: What you're saying is that, I mean, this is the
3 property line, is that my understanding?

4 MR. CREECY: Yes.

5 MS. KING: And this is your property line?

6 MR. CREECY: Correct.

7 MS. KING: And the property line next to you?

8 MR. CREECY: Right.

9 MS. KING: What you're saying is that somewhere out here in
10 the street --

11 MR. CREECY: Directly on the sidewalk, there's an eight-foot
12 fence.

13 MS. KING: A what?

14 MR. CREECY: An eight-foot commercial fence with a gate, and
15 it usurps the public space.

16 MS. KING: Somewhere out here on the sidewalk?

17 MR. CREECY: No. This set back behind this line is the lot. In
18 front of that line is the sidewalk.

19 MS. KING: Right.

20 MR. CREECY: I'm saying that the fence is directly next to the
21 sidewalk. It joins the sidewalk. It's an eight-foot commercial fence.

22 MS. KING: I understand that, but I mean, what you're
23 suggesting is --

24 MR. CREECY: It encloses what is previously defined public
25 space.

26 MS. PEACHES: This doesn't show it well.

27 MS. KING: This is the official Office of the Surveyor, and what I
28 would like you to --

29 MR. CREECY: What is the date on it?

1 MS. KING: 6/26/97.

2 MR. CREECY: Well, then that's what's enclosed in fence. They
3 usurped the public space with the fence. The surveyor went in and looked at what
4 he saw. I'm saying the --

5 MS. KING: No, no.

6 MR. CREECY: -- the Government sign was removed, and I'm
7 saying that the fence was installed in a way that enclosed the public space.

8 CHAIRPERSON REID: You're saying that the fence exceeded
9 the property line?

10 MR. CREECY: The allowable.

11 CHAIRPERSON REID: The allowable property line?

12 MR. CREECY: Yes, that's right. I'm saying there's an easement
13 there for the public, and it's over 20 years old.

14 CHAIRPERSON REID: Where you see on your pictures there
15 originally that --

16 MS. KING: No, but we have to deal with what the surveyor gives
17 us, the Office of the Surveyor gives us. So what you're saying is that the barrier is
18 somewhere out here in the public space?

19 MR. CREECY: No. It's not on the sidewalk. The public space
20 was inside of the property. In order for Michigan Liquors to use this lot and their C-1
21 purpose, they had to have a residential easement in front.

22 MS. KING: Where is the sidewalk?

23 MR. CREECY: This side of that line.

24 CHAIRPERSON REID: That's what she's asking.

25 MR. CREECY: Yes, well that's where the sidewalk is.

26 MS. KING: All right. If it's outside of the property --

27 MR. FRANKLIN: We can lean more on the issue that simply
28 says we shall not intrude on public space.

29 CHAIRPERSON REID: Encroachment.

1 MR. CREECY: Correct, but it's already done.

2 CHAIRPERSON REID: He said they had an easement.

3 MR. FRANKLIN: But it is unencroached.

4 COURT REPORTER: I can't tell who's speaking.

5 CHAIRPERSON REID: Okay. Mr. Franklin?

6 MR. FRANKLIN: You know, there's no point belaboring the
7 issue. If there's an encroachment on public space, it ought to cease.

8 CHAIRPERSON REID: But he also said there was an easement
9 which would then nullify an encroachment.

10 MR. FRANKLIN: You're saying the public space was created by
11 an easement?

12 MR. CREECY: Yes.

13 MR. FRANKLIN: Okay. If that's true, then there ought not to be
14 any encroachment on it.

15 MR. CREECY: That's right.

16 MR. FRANKLIN: All right.

17 MR. CREECY: And that's what that sign meant.

18 MR. FRANKLIN: That's all that needs to be said.

19 MR. CREECY: That sign was put in the space in front of the
20 easement.

21 COURT REPORTER: One person speaking at a time.

22 MS. PEACHES: This picture was taken after. Here and on the
23 other side where the other residential property were, there was public parking space.

24 MR. FRANKLIN: With all due respect, I can't conclude a thing
25 from that picture that I see.

26 MS. PEACHES: Yes, I know. I know.

27 COURT REPORTER: I need one person speaking at a time.

28 CHAIRPERSON REID: Okay.

29 MR. CREECY: Rodney Creecy. Now, what I'm saying is that

1 the telephone poles set up here, there are at least half a dozen. There are three on
2 each side, essentially mark off a driveway access which was used by Michigan
3 Liquors, the original owners to access the commercial space behind.

4 In the foreground where this yellow Government sign is was a
5 parking space on Michigan Avenue facing the street. And there's a space that
6 existed on both sides of that driveway across the sidewalk.

7 MS. KING: As Mr. Franklin said, if we get around to doing an
8 Order, we can simply say they can't intrude on public space, and that will cover it.
9 It's a very usual thing in parking lot.

10 MR. CREECY: Right, but the easement should be recorded, and
11 I've never found a record of the recording of the easement. Now, whoever installed
12 the public sign should have a record that the sign was installed. I never found that
13 record either. I've been through the District's records.

14 That's why I have these pictures, and again, these telephone
15 poles, they speak what I'm saying. They were not put there idly as well as the chain
16 link that was used by Mr. Miller, the previous owner, to close that lot at night. It left
17 those two spaces appurtenant to the houses essentially to be accessed outside of
18 the confines of the parking lot which was closed in the evenings. I would like you to
19 record that.

20 CHAIRPERSON REID: Mr. Franklin?

21 MR. FRANKLIN: Of course, we don't record easements. That
22 would be up to the surveyors to determine where the public space begins and ends.

23 CHAIRPERSON REID: And the easement should also be
24 reflected on that surveyor's plat. I didn't see it.

25 MR. CREECY: It's not written on the plat.

26 CHAIRPERSON REID: Okay. Mrs. King, do you have anymore
27 questions?

28 MS. KING: No.

29 CHAIRPERSON REID: Okay. Mr. Smith, would you like to

1 come up and examine?

2 MR. SMITH: We don't have any questions.

3 CHAIRPERSON REID: Okay.

4 MS. PEACHES: Yes, just in conclusion, we would like to ask the
5 Board to deny his application, but if it is approved, to approve with the conditions
6 that we have requested. Thank you.

7 MS. KING: Can I ask you a question? Ms. Creecy, you want the
8 present condition to condition?

9 MS. PEACHES: Excuse me?

10 MS. KING: You want the present conditions -- you prefer the
11 present conditions to continue rather than it being used as a parking lot --

12 MS. PEACHES: That's correct.

13 MS. KING: -- with conditions? You'd rather have it left vacant as
14 it is?

15 MS. PEACHES: For the enjoyment of the residential character,
16 that's the only way it could be done. But we understand that, you know, businesses
17 are businesses, and the Board will take into consideration both sides.

18 MS. KING: I just wanted to be clear because, you know, what it
19 was that you wanted. You want it to remain vacant.

20 MS. PEACHES: Yes.

21 MS. KING: Okay.

22 CHAIRPERSON REID: Thank you. Now, closing remarks by
23 the Applicant? I'm sorry. Were you done?

24 MR. CREECY: I just wanted to make sure that you noted these
25 terms and conditions, and there's no reason to debate them if Mr. Kelly agrees to
26 these terms.

27 CHAIRPERSON REID: We have them in the record.

28 MR. CREECY: And I don't think there's anything strange in here.

29 CHAIRPERSON REID: Okay.

1 MR. CREECY: Okay.

2 CHAIRPERSON REID: Thank you. Closing remarks by the
3 Applicant?

4 MS. KING: Either he or his attorney need to address the
5 question of conditions, I think.

6 MR. SMITH: Sure. I can do that. The Applicant would be happy
7 to comply with all the conditions that are enumerated in Chapter 23 of the Zoning
8 Regulations. A number of them that Mr. Creecy has included in his statement are
9 the same as the ones required by the Zoning Regulations. To that extent, the
10 Applicant would be happy to comply with those.

11 CHAIRPERSON REID: Okay. Would you address Section 213,
12 would you for us please?

13 MR. SMITH: Section 213 allows a parking lot in R-1 zone with
14 the --

15 CHAIRPERSON REID: Do you have a copy of the Regulations?

16 MR. SMITH: I do have a copy of the Regulations. Section 213
17 of the Regulations allows property to be used as a parking lot in a residential district
18 if approved by the Board in accordance with Section 3108. Section 352 --

19 CHAIRPERSON REID: 352?

20 MR. SMITH: Yes, because this is an R-5-A zone.

21 CHAIRPERSON REID: Okay.

22 MR. SMITH: Okay. So Section 352 allows any use permitted in
23 an R-4 which goes back to an R-1 if they're used in accordance with the rest of 213
24 which is that no dangerous or otherwise objectionable traffic conditions shall result
25 from the establishment of the use and the present character and future development
26 of the neighborhood would not be adversely affected.

27 I think the Applicant has stated that there are not dangerous or
28 otherwise objectionable traffic conditions from the present character. A lot of
29 testimony has been given concerning what has gone on on the property in the past,

1 but none of it has been attributable to the current owner and Applicant.

2 And I think that the letter from the ANC is consistent with that
3 statement. Section 213.6 states that the parking lot should be reasonably necessary
4 and convenient to other uses in the facility so that the likely result will be the
5 reduction of overspill parking on neighborhood streets, which has been addressed
6 by Mr. Kelly.

7 A majority of the parking services shall serve residential uses or
8 short-term parking needs of retail service and public facility uses in the vicinity which
9 this parking lot does. It is short-term parking for customers of Kelly's Ellis Island
10 Restaurant. And the final provision, 213.8 states that before taking final action on an
11 application for use as a parking lot, the Board shall submit the application to the D.C.
12 Department of Public Works for review and report.

13 And if I could just address the issue of public space, I think that
14 enclosed with our application is the official survey stamped by the Surveyor's Office
15 of the District of Columbia, and it shows exactly where the boundary of Lot 5 on the
16 western portion ends. It's that solid black line.

17 And on that solid black line, the surveyor's drawn in x's, a series
18 of x's which represent the chain link fence. I don't see any indication of there being
19 a strip of public space or an easement, and that is consistent with the official survey
20 from 1973 which was included in the early application to the Board when the special
21 exception was approved.

22 For purposes of your consideration of this application, we would
23 ask that you would rely on the official surveyor's plat for purpose of this approval.

24 CHAIRPERSON REID: Okay. And also, you are in compliance
25 with Chapter 23 which addresses that the standard parking lot requirements, some
26 of those -- some of which have been addressed in the conditions, but I would like
27 you to address them for the record, I mean, of the other Order that we have in the
28 record. I'd like you to give a little bit of clarification.

29 MR. SMITH: Section 2303 of the Regulations requires a parking

1 lot in any district to conform to certain special provisions including that they be paid
2 to maintained with bituminous concrete, or brick materials, or a combination of these
3 materials as structurally equivalent or better to those approved by the District of
4 Columbia Public Works which form an all weather and impervious surface, and
5 which is a minimum of four inches in thickness, that the parking lot shall be designed
6 so that no vehicle --

7 CHAIRPERSON REID: No. You are to respond to the
8 compliance with the Applicant to this particular regulation.

9 MR. SMITH: Right. This parking lot in its current state is in
10 compliance with Section 2303.1 in that it is covered. Both the commercial section
11 and the section located in the residential portion are both covered with an all
12 weather impervious surface.

13 The parking lot shall also be designed so that no vehicle or any
14 part of the vehicle projects over any lot line or building line.

15 CHAIRPERSON REID: Are you sure that the surface is
16 impervious -- that the surface is an impervious surface that covers that parking lot?

17 MR. SMITH: If it is not impervious, the entire parking lot is paved
18 on both sides, the commercial and residential. If it is not impervious, then the
19 Applicant will comply with that, and that will be written into the order.

20 MS. KING: It seemed to me that in the photographs that you all
21 provided which I am now madly looking for that there seemed to be some grass
22 growing. Presumably, you'll make that right?

23 MR. SMITH: Right. I don't know whether that's correct from our
24 photos, but if it is, the Applicant will make it right.

25 MS. KING: Well, it's difficult to tell what it is.

26 MR. SMITH: Okay.

27 MR. KELLY: Can I speak on one item? Thanks. Board
28 Members, I was getting the original zoning for the C-1 part. The head of zoning
29 showed me that to move any of the trees or shrubbery that are sort of umbrellaing

1 Mr. Creecy's house would be a mistake, and I should keep the lot clean and tidy, but
2 not remove those barriers which would be necessary to keep sounds and visions of
3 the parking lot from his home.

4 CHAIRPERSON REID: Well, right now, we're referring to
5 Section 2301, I think it is, in regard to the surface, the all weather pervious surface.

6 MR. KELLY: Right.

7 CHAIRPERSON REID: The main thing is the bituminous
8 concrete or brick materials. This is the issue right at this moment.

9 MR. KELLY: Well, maybe I can address that more particularly.
10 I'm sorry. The whole parking lot, as Mr. Adams said, is bituminous asphalt. There
11 are a couple of holes in it, but since I've been there for six years, I've gone by with a
12 Weed-Be-Gone, and all summer long no weeds have grown on that lawn for six
13 years.

14 CHAIRPERSON REID: Are you aware of the issue that Mr. Kelly
15 raised, I mean, Mr. Creecy raised in regard to the -- its weather seal is not
16 impervious to the elements and constantly rolls gravel and dirt into the public space.

17 MR. KELLY: I am very aware of that. I think Mr. Creecy, from
18 the conversations I've had with him, he hasn't been the property that much for the
19 last several years, what I think is happening is there's an easement up above, two
20 doors further up, and it's kind of muddy, big cars and everything going in and out of
21 there.

22 And then when the rain falls down, it comes down through the
23 alley and onto that sidewalk and goes along both our properties. He may be
24 mistaken that kind of runoff as runoff from my parking lot. I can tell you it's not from
25 our parking lot. Anybody can see it is covered with asphalt.

26 MR. SMITH: If I could just say when the Applicant goes to apply
27 for a Certificate of Occupancy, he will have had to comply with all of the
28 requirements in this chapter. All we ask is for the Board to allow that part to go
29 forward, to allow him to apply for his Certificate of Occupancy.

1 CHAIRPERSON REID: Okay. Continue with Chapter 23.

2 MR. SMITH: I can read the rest of them, but it's all going to be
3 the same. To the extent that they're not complied with right now, the Applicant will
4 comply with that.

5 CHAIRPERSON REID: Okay. So you're saying that any
6 condition, I mean, any subsection under this section in regard to lighting or the
7 parking lot being kept free of debris and refuse, all of the other aspects of this will be
8 complied with based on the Committee process?

9 MR. SMITH: That's correct. All of them are required under the
10 Zoning Regulations, and they will be complied with.

11 CHAIRPERSON REID: Any other questions?

12 MS. KING: No.

13 CHAIRPERSON REID: Closing remarks?

14 MR. SMITH: All I would like to say in closing is just to reiterate
15 that we would ask that this case be decided based on the official survey obtained by
16 the D.C. Surveyor's Office. Also, we would ask that any period of a special
17 exception would be at least six years.

18 This Applicant enjoys the support of the ANC-5A, Single Member
19 District, Council Member Thomas, neighboring residents. Mr. Creecy has admitted
20 that Mr. Kelly has done positive things with the property, and we feel that it would be
21 a burden on the Board's time to have to keep coming back every year.

22 This is the same use that the property had been used as in the
23 past, and we would ask the Board to rule with those factors in mind.

24 CHAIRPERSON REID: Thank you. Mr. Smith, were you going
25 to request a bench decision or Summary Order in this particular case?

26 MS. ROSE: Well, he can't have a Summary Order because
27 there's officers.

28 CHAIRPERSON REID: All right. I was just reminded because of
29 the opposition we can't have a Summary Order. Okay. I forgot that you had read

1 the party status.

2 MR. SMITH: We would ask that a bench decision be made with
3 conditions today.

4 CHAIRPERSON REID: I don't know if we can do it with people
5 in his office and parties in opposition.

6 MS. ROSE: Oh yes, we can do it.

7 CHAIRPERSON REID: Okay. As long as you don't object.

8 MS. ROSE: No, we can't do a Summary Order which doesn't
9 give all the arguments.

10 CHAIRPERSON REID: Okay. We'll do a bench decision.

11 MS. ROSE: I have provided Mr. Franklin.

12 CHAIRPERSON REID: Okay. Mr. Franklin, are you -- okay.

13 MR. FRANKLIN: Thank you.

14 CHAIRPERSON REID: All right. We'll have to have a full Order,
15 a full bench decision. Board Members, what's your pleasure in this particular case.

16 MR. FRANKLIN: I'll move the granting of the application with the
17 conditions as stated in the original special exception and with the addition of the
18 chain link fence requested by Mr. Creecy.

19 MS. KING: I second that motion.

20 CHAIRPERSON REID: All in favor?

21 MR. FRANKLIN: Aye.

22 MS. KING: Aye.

23 CHAIRPERSON REID: Aye. Opposed?

24 (No response.)

25 CHAIRPERSON REID: Staff will record the vote as three to zero
26 with Mr. Franklin, Ms. King, and Ms. Reid to grant the application. The time period
27 that was not a condition that was proffered by Mr. Creecy was for six years?

28 MR. SMITH: Yes, that's what my motion is, correct.

29 CHAIRPERSON REID: Okay. Then we'll let you have --

1 MR. SMITH: Thank you.

2 CHAIRPERSON REID: -- that condition also, a six-year term.

3 MS. ROSE: Mr. Franklin, Ms. Reid, I'm sorry. Mr. Franklin, Ms.
4 King, and Ms. Reid to grant the application. Mr. Fusi, not present, not voting. With
5 just the two conditions, the six-year approval and the chain link fence.

6 MR. FRANKLIN: Right.

7 MS. KING: And all of the conditions from the last Order.

8 MS. ROSE: And all the conditions from the last Order. Okay.

9 CHAIRPERSON REID: Now, the last Order his to have the
10 hours of operation in it, but there was a question about that as well. What are going
11 to be the hours of operation, Mr. Franklin? I'd like to so stipulate.

12 MR. FRANKLIN: Were they stipulated in the last Order?

13 MR. SMITH: Madam Chairperson?

14 CHAIRPERSON REID: Yes.

15 MR. SMITH: If any decision will be made as to hours of
16 operation, we ask that there be testimony taken on that issue. I think that the use of
17 the property -- there was no testimony on that issue.

18 CHAIRPERSON REID: I think, sir, that I did hear Mr. Creecy
19 mention something about the parking lot being used late at night with a problem with
20 noise being an adverse impact after a certain time period at night?

21 MR. SMITH: This parking lot isn't being used at all right now, the
22 section that's at issue in this application. So the noise wouldn't be coming from
23 there from patrons of the restaurant.

24 CHAIRPERSON REID: I think there was a request that it not be
25 later than 9:00 p.m.

26 MR. SMITH: Right. And we would ask that the parking lot be
27 able to be used during restaurant hours.

28 CHAIRPERSON REID: Which would be?

29 MR. KELLY: May I come forward?

1 CHAIRPERSON REID: Yes.

2 MR. KELLY: Basically, I think the parking lot, to be prudent on
3 my own behalf, but of course, I would think the hours would be all legal hours.

4 CHAIRPERSON REID: What are they?

5 MR. KELLY: The restaurant is allowed to open at 8:00 in the
6 morning, and does not close until 2:00 on the weeknights, and 3:00 on Friday and
7 Saturday. Of course, we don't stay open those hours now, and we don't know how
8 our business is going in the long-term.

9 People might have dinner late. We don't open now until 11:00,
10 but we'd like to be able to open -- we might want to start doing breakfast. We'd like
11 to open 8:00 in the morning. So all legal hours would make sense to me as the
12 owner of the property.

13 MS. KING: And we're imposing conditions that the parking lot be
14 secured when it's not in actual use?

15 MR. FRANKLIN: That's correct. Is that a problem when it's not
16 in actual use?

17 MR. KELLY: Not at all, sir. Not at all.

18 MS. ROSE: What are the hours?

19 MR. FRANKLIN: When do you now -- how late do you stay open
20 now?

21 MR. KELLY: Well, the short answer is we stay open as long as
22 we have customers. Normally, it's 10:00, 11:00, 12:00 at night. But we're allowed to
23 stay open until 2:00 a.m. and 3:00 a.m. on Friday and Saturday. We now open at
24 11:00 in the morning. we're now open at 11 a.m., but we'd like to be able to open at
25 8:00, for example, if we start serving breakfast.

26 MR. SMITH: This isn't -- these are not outside the parameters
27 that are required by the District for the operation of the restaurant, and that's all we
28 would ask was that it would be that the parking is consistent with ABC regulations.

29 MS. KING: Is it the restaurant rules, or is it the ABC rules?

1 MR. KELLY: ABC parameter hours.

2 MS. ROSE: We don't have anything in the record on that, so
3 that's something that we need to know what to put in the condition.

4 MR. MOORE: Good afternoon, ladies and gentlemen. Jerry
5 Moore as Counsel for the Applicant as well. I'd like the Board to keep in mind that
6 this is an application to remove barriers from an existing parking lot. What we have
7 here is we have a parking lot that is half used.

8 We've got barriers across half of it. Half of it is in C-1. The part
9 that is in C-1 is operational as long as the restaurant is in business. I would suggest
10 that it would be impractical to have different hours between the two halves of the
11 restaurant as long as that restaurant is open.

12 Insofar as the concerns raised by the -- by Mr. Creecy and his
13 wife, we appreciate those concerns. They did take the time to come down from
14 Lanham and talk to us about those concerns. And we discussed them, but we were
15 unable to reach resolution because a part of them had to do with postponing this
16 hearing to support his application for a change of zoning for the area, and we just
17 weren't able to come to an agreement on that.

18 But insofar as this application is concerned, we would ask the
19 Board to rely on what is in the Zoning Regulations already. Mr. Kelly is prepared to
20 stay with and comply with the existing Regulations, and we believe that what Mr.
21 Creecy has and his wife have submitted, for the most part, are right in line with the
22 existing Regulations. We'd ask the Board to approve on that basis.

23 With respect to the hours, we would ask the Board to control that
24 by two means. One is that the -- please be knowledgeable that you have an existing
25 parking lot there. It would be impractical to split the use in half. Second, if there is a
26 problem with noise, if there is a problem with litter, then there are adequate means
27 within the Department of Consumer Regulatory Affairs to enforce that.

28 Plus Mr. Kelly has to come back to this Board within a six-year
29 period if that's what the Board chooses to get a new special exception. This

1 application has the support of the ANC, and of the neighbors, and most persuasively
2 of the customers who frequent the facility.

3 MS. BAILEY: I think two points are very important, Mr. Moore,
4 and that is -- the previous Order in the project has expired some ten years, more
5 than that ago. It is very important that whoever the new owner is be responsive to
6 the tenant, to the property owners next door.

7 That's a residentially zoned property, and it needs to be carefully
8 monitored in terms of its hours of operation so the impact of that parking lot does not
9 effect that residentially zoned property.

10 CHAIRPERSON REID: We are -- there is -- we're now, I'm
11 sorry, you cannot. We passed the time for your testimony.

12 MS. KING: I thought there was going to be some re-testimony.
13 They haven't had an opportunity.

14 CHAIRPERSON REID: No, they have closing remarks. So this
15 is --

16 MS. KING: You're discussing the time --

17 MR. CREECY: Yes, you're discussing the time on the record.

18 CHAIRPERSON REID: You cannot speak from the floor, but this
19 is the procedure. They have the last statement in their closing remark, and this is
20 what we're dealing with right now.

21 MR. CREECY: This is one of the issues.

22 COURT REPORTER: You're not on the record.

23 CHAIRPERSON REID: Have a seat please. We need to
24 determine time certain, Mr. Franklin, that we feel comfortable with as far as the time
25 condition, and Mrs. King, would you like discussion on that?

26 MS. KING: There are other entities that license the hours of the
27 kind of operation that Mr. Kelly is running, and I think that Mr. Moore has made a
28 persuasive point when he says that, in terms of noise and other Regulations, the
29 Department of Consumer and Regulatory Affairs is able to implement that.

1 I think that in this case that it would be unreasonable to impose
2 upon half of a parking lot what is not imposed upon the other half even though it is
3 contiguous to a residential neighborhood. And I think that if Mr. Kelly does not
4 police that half of the parking lot adequately, the neighbors will be able to pursue a
5 claim elsewhere.

6 I'm, at this point, and then someone else can -- one of my
7 colleagues on the floor can convince me, I'm not inclined to want to set hours of
8 operation particularly since it didn't arise during the discussion in main of this issue.

9 CHAIRPERSON REID: I would concur with you, Ms. King. I feel
10 that, as Mr. Moore said, it really is ridiculous to even think about trying to split a
11 parking lot with different hours for one half and the other half. I think the concerns
12 can be better addressed. If, in fact, it does become a problem or more of a problem
13 with the DCRA, and that the hours that were, and they never really proffered hours, I
14 think they said 8:00 until what time?

15 MS. KING: 2:00 or 3:00 in the morning.

16 CHAIRPERSON REID: No, during the week I think it was?

17 MR. KELLY: 2:00 a.m.

18 CHAIRPERSON REID: During the week?

19 MR. KELLY: We're allowed 2:00 a.m. during the week and 3:00
20 a.m. on the weekends.

21 CHAIRPERSON REID: Okay. Well, I'll say 8:00 a.m. to 2:00
22 a.m. Monday through Thursday?

23 MR. KELLY: Sunday through Thursday.

24 CHAIRPERSON REID: Sunday through Thursday, and then on
25 Friday and Saturday, 8:00 a.m. until 3:00 a.m. Is that correct? Is that what you're
26 asking for?

27 MR. KELLY: Right.

28 CHAIRPERSON REID: Mr. Franklin, what do you?

29 MR. FRANKLIN: I don't think I'd like to live next door to a

1 parking lot whose operating until 2:00 or 3:00 in the morning. And I understand
2 where Mr. Moore is coming from, and I understand the business necessity in terms
3 of a split lot, but they're not operating to that period of time now, and I suspect that a
4 restaurant operation in the District of Columbia doesn't need to operate until 2:00 in
5 the morning typically. So I'm inclined to limit it to about midnight.

6 CHAIRPERSON REID: Every night or just during the week?

7 MR. FRANKLIN: Every night. Maybe 1:00 a.m. on a weekend
8 night, but -- and I don't think that will be an inconvenience. But I wouldn't go to the
9 barricades to fight with my colleagues over it.

10 MS. KING: What is your opinion?

11 CHAIRPERSON REID: I stated mine was the timeframe that
12 they had proffered. However, in view of the -- in lack of accord here, then I think
13 look at 8:00 a.m. in the morning is not a problem. So the only issue is the evening.
14 Mrs. King had no problem with 2:00 and 3:00 a.m. for the close, and Mr. Franklin
15 has said 12:00 during the week and 1:00 on the weekend.

16 MS. KING: I'm willing to go with that. Is that within the hours
17 that you're presently operating, Mr. Kelly?

18 MR. KELLY: It is except on certain occasions, you see. For
19 example, we have more School Board meetings that often come over at 10:00 for
20 dinner, and they don't get their cars out until 1:00 or 2:00 in the morning. We have
21 neighborhood association meetings after they get home from work. They would put
22 a restrictor on me. The value of my parking --

23 CHAIRPERSON REID: Could you live with 1:00 during the week
24 and 2:00 on the weekends as a compromise here?

25 MR. KELLY: I could compromise for that.

26 CHAIRPERSON REID: Mrs. King?

27 MS. KING: It's okay with me.

28 CHAIRPERSON REID: Mr. Franklin agrees?

29 MR. FRANKLIN: Yes.

1 CHAIRPERSON REID: Okay then. So be it. 1:00 Sunday
2 through Thursday and 2:00 a.m. Saturday and Sunday 2:00 a.m.

3 MS. KING: Okay. Have we refined the motion now so that we
4 can vote?

5 CHAIRPERSON REID: We voted. We voted. We just amended
6 it to --

7 MS. KING: Just amended it?

8 CHAIRPERSON REID: -- include the hours of operation. And I
9 think that we now have all of the items that were a part of conditioning as a part of
10 our approval. Right, Ms. Rose?

11 MS. ROSE: Yes. Yes. The other conditions in the previous
12 Order were ones that were proffered by Mr. Creecy.

13 CHAIRPERSON REID: Okay. Thank you. That would conclude
14 your case. And you can have your Order in approximately two weeks.

15 MS. KING: Are we going to ask Mr. Adams to draft an Order?

16 MS. ROSE: A proposed Order?

17 MS. KING: Draft a proposed Order?

18 CHAIRPERSON REID: Sure. And that would expedite the time
19 for your -- receiving your approval and your Order.

20 MR. SMITH: Thank you, Madam Chair.

21 CHAIRPERSON REID: Thank you. Okay. Okay. We have one
22 more. We'll try to expedite that. Please call the next case, the last case. The last
23 case of the day.

24 MS. ROSE: The last case on the agenda is 16331 of John F.
25 Belfiore, pursuant to 11 DCMR 3108.1, for a special exception under Sections 726
26 and 2302 to re-establish and continue use as an auto repair and storage garage with
27 no body and fender work in a C-2-A District at premises Rear 1437 Newton Street,
28 N.W. (Square 2678, Lot 832).

29 Would all persons planning to testify in this application please

1 rise to take the oath? Please raise your right hand. Do you swear or affirm that the
2 testimony you're about to give will be the truth, the whole truth, and nothing but the
3 truth, please say I do?

4 MR. SINGLETON: I do.

5 MS. ROSE: You may be seated.

6 MR. SINGLETON: Thank you. Good afternoon, Chairperson
7 and Members of the Board. My name is Benjamin Singleton, owner of Ben's Auto
8 Repair, which is located in the rear of 1437 Newton Street, N.W., Washington, D.C.

9 CHAIRPERSON REID: Okay. Proceed.

10 MR. SINGLETON: I beg your pardon?

11 CHAIRPERSON REID: Proceed with your case.

12 MR. SINGLETON: Yes, ma'am.

13 CHAIRPERSON REID: Would you like to give your testimony,
14 sir?

15 MR. SINGLETON: I had been there since 1982 -- the last part of
16 1982, and I have been in automotive repair for the past 47 years which I
17 have --

18 MS. KING: I'm sorry, sir. I didn't understand what you said.

19 MR. SINGLETON: Are you listening to my case now, ma'am,
20 excuse me?

21 CHAIRPERSON REID: Yes. Your name is Mr. Singleton?

22 MR. SINGLETON: Yes, ma'am, Singleton.

23 CHAIRPERSON REID: Mr. Singleton, are you familiar with the
24 procedures here, of the process that which you are now undergoing?

25 MR. SINGLETON: Yes, ma'am.

26 CHAIRPERSON REID: You are?

27 MR. SINGLETON: Yes, ma'am.

28 CHAIRPERSON REID: Okay. So you understand that you must
29 convince us as to why we should grant the relief you requested for special

1 exception.

2 MR. SINGLETON: The reason?

3 CHAIRPERSON REID: Yes.

4 MR. SINGLETON: Yes, ma'am. I've been in the automotive
5 field. That's my trade, and I've been since -- as a mechanic, I've been working on
6 cars for the past 47 years, and I've been in -- I mean this is all I -- this is my
7 livelihood in which I've been trained. I went to school for it, took up courses, and this
8 is my trade.

9 CHAIRPERSON REID: Okay, Mr. Singleton. Let us try to kind
10 of guide you through the process so that you will be able to have the most favorable
11 type of response in which you're asking. You're asking for a special exception. All
12 right. In order to -- you went down to DCRA to apply for a Certificate of Occupancy?

13 MR. SINGLETON: Occupancy permit.

14 CHAIRPERSON REID: Okay. And then you were sent here.

15 MR. SINGLETON: Yes, ma'am.

16 CHAIRPERSON REID: All right. Now, do you know why you
17 were sent here?

18 MR. SINGLETON: I have to have a license to operate the
19 business.

20 CHAIRPERSON REID: Okay. But do you know what you have
21 to do when you come here?

22 MR. SINGLETON: I was instructed.

23 CHAIRPERSON REID: Okay. I understand that. All right. Well,
24 we have Regulations. There are Regulations that you have to comply with in order
25 to get the relief that you're asking for. Okay? Are you at all familiar with the
26 Regulations?

27 MR. SINGLETON: Yes, ma'am.

28 CHAIRPERSON REID: You are? I think you come under
29 Section 726.1. Are you familiar with that?

1 MR. SINGLETON: No, ma'am.

2 CHAIRPERSON REID: Okay. And also 2302, Chapter 23 under
3 Subsection 2302. So let us try to quickly take you through it, and see if we can
4 assist you through the process.

5 MR. SINGLETON: Thank you.

6 CHAIRPERSON REID: 2302 is the Regulations that pertain to
7 parking, storage garage, mechanical parking garages, and gasoline service stations.
8 Let me just read it to you, and you can respond to it. Okay?

9 MR. SINGLETON: Okay.

10 CHAIRPERSON REID: 2302.1, a public storage garage, repair
11 garage, mechanical parking garage, a gasoline service station established or
12 enlarged in any District except in CM or in M shall be subject to the provisions set
13 forth in this section.

14 2302.2, no part of the structure or premises to be used for any of
15 the uses listed in 2302 shall be located within 25 feet of a residence district unless
16 separated from that residence by a street or alley. Now, is your building more than
17 25 feet from a residential district?

18 MR. SINGLETON: Yes, ma'am.

19 CHAIRPERSON REID: It is?

20 MR. SINGLETON: Yes, ma'am.

21 CHAIRPERSON REID: Okay. Did you bring any pictures or
22 anything?

23 MR. SINGLETON: Yes, I have a picture, the photo I have of the
24 side and also the front.

25 CHAIRPERSON REID: Okay. All right. 2302.3, no uses listed
26 in 2302.1 shall have a vehicular entrance or exit connected with the street or closer
27 than 25 feet between residence district in existence at the time use is established
28 unless separated from the residence by a street or alley.

29 MR. SINGLETON: Yes, ma'am.

1 MS. KING: It is separated by an alley.

2 CHAIRPERSON REID: Okay. 2302.2, no driveway or any
3 entries or exits for any use listed in 2302 shall be closer than 40 street to a street
4 intersection that's measured from the intersection of the curb lines extended.

5 MR. SINGLETON: It's more than 40 feet, yes.

6 CHAIRPERSON REID: It's more than 40 feet?

7 MR. SINGLETON: Yes, ma'am.

8 CHAIRPERSON REID: 2302.2, except in a CM or M District, all
9 grease pits or hoists constructed or established as part of a use in 2302.1 shall be
10 within a building. What about your grease pit or your hoist?

11 MR. SINGLETON: There is no grease pit.

12 CHAIRPERSON REID: No grease pit.

13 MR. SINGLETON: The only thing that I have inside, I mean
14 that's inside the building is a 250-gallon tank which I dump oil into, and then as it's
15 full, I will call the company. They pump the oil out. There's nothing outside.

16 CHAIRPERSON REID: Okay. What about your hoist?

17 MR. SINGLETON: What is it?

18 CHAIRPERSON REID: Well, it's the mechanism that you use to
19 pull up the cars?

20 MR. SINGLETON: Lift?

21 CHAIRPERSON REID: Yes.

22 MR. SINGLETON: I have jacks, those hydraulic jacks. I don't
23 have a lift, just hydraulic jacks, and I have a stand.

24 CHAIRPERSON REID: Inside?

25 MR. SINGLETON: That's inside, nothing outside.

26 CHAIRPERSON REID: Okay. We go now to Section 726.1.

27 Gasoline service stations in C-2, a gasoline service station established or enlarged
28 after the adoption of these Regulations for repair shops that including body and shell
29 remain in C-2 District. That's not including body and fender work. The repair work

1 not including body and fender work, and I think I see in your application that there's
2 no body and fender work in here.

3 MR. SINGLETON: No body.

4 CHAIRPERSON REID: Okay. Shall be permitted in accordance
5 with and specified in Section 8 of Chapter 31.

6 MR. SINGLETON: That's done.

7 CHAIRPERSON REID: Okay. Subject to the special provisions
8 of Chapter 23 and provision 706 of Chapter 7 at this time. We'll look at 706 in a
9 moment. Each application submitted under this section shall be referred to the
10 Office of Planning, and I think that -- it says referred to Office of Planning. Yes, it
11 was referred to the Office of Planning.

12 MS. KING: 725?

13 CHAIRPERSON REID: 726, I'm sorry.

14 MS. KING: Is this a gasoline service station? This is an auto
15 repair --

16 MR. SINGLETON: This is just a garage. There is no gas
17 involved.

18 CHAIRPERSON REID: There's no gasoline on the premises?

19 MR. SINGLETON: No.

20 CHAIRPERSON REID: Okay. 706 is for gasoline service
21 stations.

22 MS. KING: And you're not doing any body work or fender
23 repair?

24 MR. SINGLETON: Absolutely not.

25 CHAIRPERSON REID: Okay. The service station or repair.
26 Okay. Did you talk to the ANC, the Advisory Neighborhood Commission at all --

27 MR. SINGLETON: No, ma'am.

28 CHAIRPERSON REID: -- about your application?

29 MR. SINGLETON: No, ma'am.

1 CHAIRPERSON REID: You did not. Have you had any
2 complaints from any of the neighbors in the area regarding the use of the property
3 as an auto repair shop?

4 MR. SINGLETON: The only time, which was maybe about six,
5 seven months ago, the apartment building which is west of me, they have tenants.
6 And then maybe once in a while some were concerned about it, but he knew the day
7 I was coming. But there are no complaints or anything. I haven't had any
8 complaints.

9 MS. KING: Mr. Singleton, how long have you operated your
10 business in this location?

11 MR. SINGLETON: At 1437 Newton?

12 MS. KING: Yes, at this location.

13 MR. SINGLETON: Since the last part of 1982.

14 MS. KING: And your Certificate of Occupancy ran out nine years
15 ago.

16 MR. SINGLETON: Yes, ma'am.

17 MS. KING: And you've been operating without a C of O, without
18 a Certificate of Occupancy for nine years.

19 MR. SINGLETON: I have been back and forth. It's always for
20 one thing or another, and I tried several times. Since '95, I've been down there, and
21 I've had a problem.

22 CHAIRPERSON REID: You had a problem?

23 MR. SINGLETON: Well, I've been going back and forth.

24 CHAIRPERSON REID: I don't understand. You say you had
25 problems?

26 MR. SINGLETON: When I filed for it, I was approved, but I did
27 without the Certificate of Occupancy. I didn't finish processing my papers through.

28 MS. DOBBINS: Madam Chair, I can help shed just a little light
29 on this. This case was before the Board once before. It was -- the decision was

1 vacated, and it was dismissed for the gentleman's check did not clear. So the Order
2 could not be issued.

3 CHAIRPERSON REID: I see.

4 MS. DOBBINS: So he had to rebring it again.

5 CHAIRPERSON REID: Thank you, Madam Director.

6 MR. SINGLETON: Thank you.

7 CHAIRPERSON REID: So that then explains that. Mr. Franklin,
8 do you have any questions of this Applicant?

9 MR. FRANKLIN: No.

10 CHAIRPERSON REID: All right. There are no Government
11 Reports. There is no ANC.

12 MR. FRANKLIN: I have a question of Ms. Dobbins. At the time
13 that the Board had the case, did we have ANC comments? Did we have any reports
14 from planning?

15 MS. DOBBINS: There was a planning report, I'm sure, at that
16 time.

17 MR. FRANKLIN: Was it favorable?

18 MS. DOBBINS: I think it was. Yes, it was, and I think it was
19 granted, but the Order was never issued. We -- if the check is returned, we will not
20 issue the Order until the account is clear. And so we did send the gentleman a letter
21 and told him to do that, and explained to him that if it was not done within a given
22 period of time, that we would make a recommendation to the Board that it be
23 dismissed, vacated and dismissed. And that's what occurred.

24 MR. FRANKLIN: I take the check has cleared at this time?

25 MS. DOBBINS: Yes, as far as I can tell.

26 MR. SINGLETON: That is cleared.

27 CHAIRPERSON REID: All right, then. There are no parties here
28 in support or in opposition for this particular application. So we come now, sir, to
29 your closing remarks.

1 MR. SINGLETON: I would like the Board to grant my license so
2 I can upgrade which is my life of work. And I like working on cars, and I like it
3 because it makes the customer happy, and this is all I know.

4 CHAIRPERSON REID: And also, would you like to have a
5 decision today?

6 MR. SINGLETON: I beg your pardon?

7 CHAIRPERSON REID: Would you like to have a decision
8 today?

9 MR. SINGLETON: Yes, I would like to.

10 CHAIRPERSON REID: Okay. Board Members, I would move
11 approval of this application. I think that the -- after having gone through the entire
12 case with the Applicant, granting this relief would be in harmony with the purpose
13 and intent of the Zoning Regulations, and I don't think it would adversely affect
14 neighboring properties. And it would be in accordance with the Zoning
15 Regulations and the map.

16 MS. KING: I second.

17 CHAIRPERSON REID: Okay. All in favor? Aye.

18 MR. FRANKLIN: Aye.

19 CHAIRPERSON REID: Opposed?

20 MS. ROSE: Does the Board intend to condition this at all?

21 CHAIRPERSON REID: Did we have any conditions to impose
22 on this particular --

23 MR. FRANKLIN: Was the previous action conditioned?

24 MS. DOBBINS: I don't remember. I think the testimony you've
25 taken today basically only dealt with assuring that all of the operations were inside
26 the building. I don't know what his normal working hours are.

27 CHAIRPERSON REID: We can --

28 MS. KING: Should this be done for a period?

29 MS. DOBBINS: And I was about to say I don't know if you

1 intended to do it for a period of time.

2 CHAIRPERSON REID: Well, it wouldn't hurt. I want to amend
3 the motion to include a condition for a period of ten years, and that the hours of
4 operation be tell me.

5 MR. SINGLETON: My hours is from Monday through Saturday
6 from 8:00 to 6:00, and I'm closed Sundays.

7 CHAIRPERSON REID: Monday to Saturday 8:00 to 6:00 and
8 closed on Sunday.

9 MR. SINGLETON: Closed Sundays.

10 CHAIRPERSON REID: Okay.

11 MS. DOBBINS: And that all repair and storage facilities should
12 be contained within the building?

13 CHAIRPERSON REID: Yes, well we -- okay. We had trust that
14 within the Regulations, but it doesn't hurt to put that in as well. All right. I think that
15 concludes it. Thank you, sir. You'll have your decision -- you'll have your Order in
16 about two weeks.

17 MR. SINGLETON: Thank you very much.

18 CHAIRPERSON REID: That concludes today's session.

19 MS. ROSE: Let me just record the votes. Staff will record the
20 vote as three to zero with Ms. Reid, Ms. King, and Mr. Franklin to grant the
21 application. Mr. Fusi not present, not voting. Yes, we're done.

22 (Whereupon, the above-entitled matter was concluded at 4:18
23 p.m.)

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